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Crl.MP.No.15119 of 2023
in Crl.A.No.1184 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.15119 of 2023
in Crl.A.No.1184 of 2022

Suresh

...Petitioner

Vs.

State by
The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.
(Crime No.239/2018)

... Respondent

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.96 of 2019 dated 18.07.2022 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.V.Parthiban
For E.Kannadasan
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.C.Aravind

ORDER



CrI.MP.No.15119 of 2023
in CrI.A.No.1184 of 2022

WEB COPY

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.96 of 2019 dated 18.07.2022 and enlarge him on bail pending disposal of the above Criminal Appeal.

2. The learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.96 of 2019 convicted the petitioner herein and sentenced him as follows:

Accused (A1)	Offence	Sentence Imposed
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.

3.Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.V.Parthiban, learned Counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the



Crl.MP.No.15119 of 2023
in Crl.A.No.1184 of 2022

respondent/State.

WEB COPY

5. It is the case of the prosecution that the petitioner and the deceased were husband and wife and had frequent quarrels, since the petitioner was a drunkard and that on 11.07.2018 at 4.00 p.m, the petitioner picked up quarrel with the deceased and abused her in filthy language and scolded her “ go to heaven”; that the deceased thereafter poured kerosene on her body and the petitioner threw the burning match stick with intention to cause death.

6. Learned counsel for the petitioner submits that the entire case is based on circumstantial evidence and rests on the dying declaration, said to have been given by the deceased to P.W.10/Judicial Magistrate on 11.07.2018 at 11.35 p.m; that the evidence shows that the deceased was unconscious and the learned Magistrate had asked the mother P.W.1 as to how the incident took place and therefore, dying declaration cannot be said to be voluntarily or truthful.

7. Per contra, learned Additional Public Prosecutor submits that the nature of the dying declaration would reveal that it is truthful since the deceased had specifically stated thta her in-laws i.e., the parents of the petitioner were good to



Crl.MP.No.15119 of 2023
in Crl.A.No.1184 of 2022

her; that therefore, the trial Court had rightly convicted the petitioner and the petitioner is not entitled for suspension of sentence.

8. We have carefully considered the rival submissions and perused the records. According to P.W.1, the deceased was unconscious through out till she passed away on 16.07.2018. Further, P.W.1 would state that the learned Judicial Magistrate enquired her as to how the deceased sustained burn injuries. There was no reason for the learned Magistrate to enquire the mother of the deceased. Thus, there is a doubt with regard to the voluntariness and truthfulness of the Dying Declaration said to have been recorded by the Magistrate. There is no other evidence apart from the Dying Declaration.

9. Considering the facts and circumstances of the case, the nature of the evidence, the evidence of P.W.1 which throws out a doubt about the voluntariness and truthfulness of the dying declaration and also taking note of the fact that the petitioner is in custody from 18.07.2022 and the present appeal is not likely to be taken up for final hearing in the near future, we are inclined to suspend the sentence on the following conditions:



WEB COPY



CrI.MP.No.15119 of 2023
in CrI.A.No.1184 of 2022

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only), with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

(M.S.R., J.) (S.M., J.)
13.02.2024

SR

Note: Issue Order Copy on 14.02.2024

Internet : Yes

Index : Yes / No



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Crl.MP.No.15119 of 2023
in Crl.A.No.1184 of 2022

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

sr

To

1. The Sessions Judge, Fast Track Mahila Court, Krishnagiri.
2. The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras.

Crl.MP.No.15119 of 2023
in Crl.A.No.1181 of 2022

13.02.2024