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Crl.M.P.No.12365 of 2024
in Crl.A.No.576 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.No.12365 of 2024

in

Crl.A.No.576 of 2024

Harinath

S/o.Jayasingh

... Petitioner/Accused

Vs.

State Represented by

The Inspector of Police,

K2 Ayanavaram Police Station,

Chennai District.

(Crime No.205 of 2021)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence of imprisonment imposed on the petitioner in Spl.S.C.No.268 of 2021 on the file of Sessions Judge, Mahalir Neethimanram, Allikulam, Chennai by a judgment dated 07.03.2024 and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.A.S.Aswin Prasanna

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence imposed in Spl.S.C.No.268 of 2021 passed by the learned Sessions Judge, Mahalir Neethimanram, Allikulam, Chennai by a judgment dated 07.03.2024 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner/Accused was convicted by the trial Court in Spl.S.C.No.268 of 2021 by judgment dated 07.03.2024 and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo 3 months simple imprisonment for offence under Section 452 of I.P.C., seven years (each count) rigorous imprisonment and to pay a fine of Rs.10,000/- each count, in default to undergo 3 months simple imprisonment (each count) for offence under Section 307 of I.P.C. (2 counts), and three years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 3 months simple imprisonment for offence under Section



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506(ii) of I.P.C. Aggrieved against the conviction, the petitioner preferred an appeal in Crl.A.No.576 of 2024 before this Court along with petition seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, PW1 to PW13 examined and Exs.P1 to P32 marked and Material Objects M.O.1 to M.O.4 marked. On the side of the defence, DW1 examined and Exs.D1 to D8 marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

4.The contention of the learned Senior Counsel for petitioner is that in this case PW1/de-facto complainant is the mother of the petitioner, who has not supported the case of the prosecution. In this case two persons, namely, PW2/father of the petitioner, PW4/sister of the petitioner were projected as injured witnesses due to the attack by the petitioner on



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11.04.2021 at the early hours of 5.00 a.m. Earlier to it, there was some property dispute and the manner in which the petitioner's father/PW2 dealt with same. The petitioner was not happy with the same and he left the house and living separately for six months. It is stated that on 11.04.2021 at about 5.00 a.m. when PW2 came to attend nature call, at that time the accused armed with knife and crowbar, trespassed into the house by jumping over the compound wall and attacked PW2 with the said weapons on his head. Thereafter, on hearing his noise, PW1 came to stop him but the petitioner pushed her and went inside the house and attacked PW4/sister. Thereafter, he said to have escaped from the scene of occurrence.

4.1. PW12 is the Doctor attached to Kilpauk Government Hospital, who gave Accident Register copy, PW10 is the Doctor from Apollo Hospital, who speaks about the treatment given to PW2 and PW4. It is seen that the injuries sustained by PW2 is simple in nature. As regards the injury sustained by PW4, except fracture on her face, which is found to be grievous in nature,



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the other injuries are not that grievous. None of the injuries can be termed to be life threatening injuries. It is an admitted fact that there was a dispute on execution of Power of Attorney in favour of PW3, the paternal uncle of the petitioner. The petitioner is in the mid of 40's, an M.B.A. Graduate. Likewise, his sister/PW4, who is aged about 46 years, is also unmarried. PW4 earlier in Isha Centre. Thereafter, she continued her virtual life. Several unknown persons calling her, used to visit the house, which was objected by the petitioner. There was not much cordial relationship between them. For that reason outburst and fight which is given criminal colour as though the petitioner used deadly weapons to finish off his father and sister.

4.2.He further submitted that in this case PW1/mother retracting from her earlier statement stating that she was earlier forced to give a complaint against the petitioner. Other witnesses for recovery of M.O.3 and M.O.4 not proved in the manner known to law. The petitioner infact examined himself as DW1, gave explanation and for what reason he left the



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home and how he was implicated in this case, the trial Court failed to consider these aspects and convicted the petitioner. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) filed counter submitting that on 06.04.2021, the petitioner went to the house, quarrelled with his sister/PW4 and threatened her. Thereafter, on 11.04.2021, armed with knife and crowbar, trespassed into the house by jumping over the compound wall. At about 5.00 a.m. when PW2/father came out to attend nature's call, he attacked him on his head and caused simple injury. PW1/mother of the petitioner on hearing the noise came out and the petitioner also pushed her. Thereafter the petitioner entered into the house searched for her sister/PW4, who was sleeping in the bed room, attacked mercilessly on her face and caused grievous injuries. Thereafter escaped from the scene of occurrence. On the complaint, a case in Crime No.205/2021 for offences under Sections 294(b), 452, 324, 326, 307 and 506(ii) of I.P.C. registered.



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PW13 took up investigation, visited scene of occurrence, prepared observation mahazar, rough sketch, examined the injured, who took treatment initially at KMC hospital and thereafter in Apollo hospital as inpatient. The petitioner absconded, later he created a drama by staging a protest in the office of Commissioner of Police and attempted to kill himself. He was apprehended, taken to Vepery police station. The petitioner has got serious dispute in the property and in the manner, in which, PW2/father was dealing with the same and also had some dispute with his sister, for which, he committed the offence, which was proved by the evidence of injured witnesses/PW2 and PW4 and Doctors/PW10 and PW12. He further submitted that before the trial Court PW1 to PW13 examined and Exs.P1 to P32 marked and Material Objects M.O.1 to M.O.4 produced. On the side of the accused, DW1 examined and Exs.D1 to D8 marked. The Trial Court on the evidence of witnesses and the materials produced had rightly convicted the petitioner. Hence, prays for dismissal of the petition.



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6.Considering the submissions made and on perusal of the materials available on record, it is seen that PW5 is the cousin brother of petitioner and PW3 is his Aunt. On the belief that petitioner is the reason for stopping of the marriage in their family, the petitioner was assaulted in this regard. PW2/father executed a Power of Attorney in favour of PW3's husband on the family property, which was objected by the petitioner. PW4, who is also unmarried in the late 40's, had visitors meeting her, which was objected by the petitioner. There was a family feud and misunderstanding in the family, for which, the petitioner was ill-treated and later he left the house and he was staying in private home. As could be seen from the evidence of PW10 and PW11, except fracture on the face of PW4, other injuries are not that grievous and none of the injuries are life threatening injuries. In this case, the seizure and recovery of M.O.3 and M.O.4 not proved. The petitioner is also a person, who took treatment for anxiety and restless, which cannot be discounted. In view the above, this Court finds that the conviction of the



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petitioner needs reconsideration. In view of the same, this Court is inclined to grant suspension of sentence to the petitioner.

7. Accordingly, the substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8. Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the criminal appeal and if he is not able to appear before the Trial Court on that 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.



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9. Accordingly, this Criminal Miscellaneous Petition is ordered.

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Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

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To

1. The The Inspector of Police,
K2 Ayanavaram Police Station,
Chennai District.

2. The Sessions Judge,
Mahalir Neethimanram,
Allikulam, Chennai.

3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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