



Crl.M.P.No.12327 of 2024
in Crl.A.No.1106 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM:

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

Crl.M.P.No.12327 of 2024

in

Crl.A.No.1106 of 2024

Balasubramanian

... Petitioner/Accused

Vs.

The State represented by its;
The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur.
(Crime No.576 of 2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed in S.C.No.07 of 2020 dated 28.06.2024 on the file of the learned Chief Judicial Magistrate Court, Tiruppur and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.S.Manoharan

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 S.C.No.07 of 2020 vide judgment dated 28.06.2024 on the file of the learned Chief Judicial Magistrate Court, Tiruppur and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

2.The petitioner/Accused was convicted by the trial Court in S.C.No.07 of 2020 by judgment dated 28.06.2024 and sentenced to undergo 7 years rigorous imprisonment for each count (14 years) and to pay a fine of Rs.5,000/-, in default to undergo 3 months simple imprisonment for offences under Section 307 (2 count) of IPC and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 3 months simple imprisonment for offences under Section 449 of IPC. Aggrieved against the conviction, the petitioner preferred an appeal in Crl.A.No.1106 of 2024 before this Court along with petition seeking suspension of sentence



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and bail.

3.During trial, on the side of the prosecution, PW1 to PW10 examined, Exs.P1 to P10 marked and M.O.1 marked. On the side of the defence, no witnesses were examined and no documents were 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 counsel for the petitioner is that the petitioner and PW1 are brothers who have had a dispute over property. The petitioner was originally residing with his mother PW5, but was subsequently forced out of the house due to the instigation of PW1. In the partition of the property, the petitioner was allotted 15 cents, while his mother received 10 cents. PW1 visited the residence of his mother- PW5, where some electrical work was underway. During this time, the petitioner is alleged to have attacked both PW1 and PW5, resulting in them seeking treatment at KMCH



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Government Hospital. In this case, except PW1, the other eyewitnesses namely PW3 to PW6, did not support the case of the prosecution. PW7, the Doctor who issued the wound certificates of PW1 and PW5 marked as Ex.P3 and Ex.P5 respectively and reported that the injuries sustained by PW1 specifically to his nose, left eye, and right foot were grievous in nature but they are on non-vital parts of the body. Similarly, the injury sustained by PW5 to her left forearm was also grievous in nature but that also on non-vital parts. The evidence suggests that the incident arose solely from a family property dispute, the petitioner had no bad antecedent. In fact, the petitioner himself sustained injuries during the altercation, which the prosecution has not adequately explained. He further submits that the injuries are on non-vital parts of the body, hence, the contention of the offence under Section 307 of IPC will not be sustainable. Therefore, he requests the granting of suspension of sentence for the petitioner.



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5.The learned Government Advocate (Crl. Side) filed his counter and submitted that the occurrence had taken place on 27.06.2019 inside the house of PW5. The petitioner allegedly trespassed into the house of PW1 and attacked both PW1 and PW5 with a knife, marked as M.O.1. After the attack, the petitioner left the knife behind and fled the scene of occurrence. Later, he was arrested and PW1 and PW5 had given treatment in hospital. PW7 is the Doctor who treated them. The learned Government Advocate (crl.side) further submitted that in this case, PW5 being mother of the petitioner not supported the case of the prosecution and other witnesses have turned hostile. Based on the complaint given by the brother of the victim PW1, a case has been registered in Crime No.576 of 2019 for the offence under Section 448, 294(b), 307 of IPC on 27.06.2019. He further submitted that during trial, PW1 to PW10 examined, Exs.P1 to P10 marked and M.O.1 marked. On the side of the defence, no witnesses were examined and no documents were marked. The trial Court on the evidence of the witnesses had rightly



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convicted the petitioner. Hence, prays for dismissal of the petition.

6. Considering the submissions and perusal of records, it is seen that the petitioner and PW1 are siblings and PW5 is the mother of the petitioner and there exists a dispute regarding the division of property, and the grievous injuries sustained by PW1 and PW5, as noted by PW7, are located on non-vital parts of their bodies . In view of the above, 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



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three months on the first working day of every English Calendar month at 10.30 a.m., 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

25.09.2024
(2/2)

Index : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

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M. NIRMAL KUMAR, J.

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To

1.The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur.

2.The Chief Judicial Magistrate Court, Tiruppur

3.The Superintendent of Prison,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

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