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Crl.M.P.No.12876 of 2024 in Crl.A.No.1153 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.12876 of 2024
in Crl.A.No.1153 of 2024

Nagesh

... Petitioner/Sole Accused
Vs.

The State Rep. by
The Inspector of Police,
Devala Police Station,
Devala.
(Cr.No.191/2009)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C., to suspend the sentence imposed in S.C.No.7 of 2019 dated 31.01.2024 on the file of the learned Sessions Judge, Magalir Neethimandram, (FTMC), Udhagamandalam, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.J.Franklin
For Respondent : Mr.V.J.Priyadarsana
Government Advocate (Crl. Side)
assisted by Ms.A.Shahana Fathima

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 31.01.2024 passed in S.C.No.7 of 2019 on the file of the



learned Sessions Judge, Magalir Neethimandram, (FTMC),
Udhagamandalam, and to enlarge the petitioner on bail pending disposal
of the appeal.

2. It is the case of the prosecution that the petitioner and the deceased were husband and wife; that the petitioner suspecting the character of the deceased, used to fight with her often; and that on one occasion after the petitioner quarrelled with the deceased, she poured kerosene over her and set herself ablaze.

3. The petitioner, was convicted for the offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months.

4. Heard Mr.J.Franklin, learned counsel for the petitioner and Mr.V.J.Priyadarsana, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The learned counsel appearing for the petitioner would submit



that the evidence of PW6/son of the victim and the other evidence on record would show that the *overt act* attributed to the petitioner would not constitute the offence under Section 306 of IPC. He further submitted that the petitioner is in custody from 31.01.2024 and prayed for grant of suspension of sentence to the petitioner.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that there is evidence to establish the offence under Section 306 of IPC and no ground has been made out for grant of suspension of sentence.

7. PW6-son of the deceased has stated that since the petitioner suspected the character of the deceased and had questioned her, the deceased poured kerosene and set herself ablaze. Whether the *overt act* attributed to the petitioner namely that he quarrelled with the deceased suspecting her character would constitute an offence under Section 306 of IPC has to be considered in the appeal. The petitioner is in custody from 31.01.2024.

8. Therefore, considering the above facts, the period of



incarceration and the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/- , with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram, (FTMC), Udhagamandalam;
- (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; and
- (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.



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Issue order copy by 07.11.2024
Upload the order copy forthwith.

To

- 1.The Sessions Judge,
Magalir Neethimandram, (FTMC),
Udhagamandalam.
2. The Inspector of Police,
Devala Police Station,
Devala.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

ars

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