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Crl.MP.No.17651 of 2023
in Crl.A.No.1251 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.17651 of 2023
in Crl.A.No.1251 of 2023

Subramanian

...Petitioner/Sole Accused

Vs.

The State by
The Inspector of Police,
Katoor Police Station
Coimbatore
Crime No.897 of 2021

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence passed against the petitioner by the Hon'ble I Additional District & Sessions Judge, Coimbatore in S.C. No.60 of 2022 dated 17.08.2023 and enlarge the petitioner on bail pending disposal of the above Criminal appeal.

For Petitioner : Mr.M. Jaikumar
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind,C.

ORDER



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(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 in S.C.No.60 of 2022 on the file of the I Additional District and Sessions Judge, Coimbatore, dated 17.08.2023 and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.60 of 2022, convicted the petitioner under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months.

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

4.Heard Mr.M. Jaikumar, learned Counsel appearing for the petitioner and



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Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the
respondent/State.

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5. The case of the prosecution is that the deceased and the petitioner were friends and used to stay together at a place called Bairava Towers; that they were found fighting with each other at 9.15 p.m. on 15.10.2021 and thereafter the deceased was found dead with injuries on his face and head; and that the petitioner had caused those injuries on account of a dispute with regard to a missing cell phone belonging to the petitioner.

6. The learned counsel for the petitioner submitted that the prosecution case, which is based on circumstantial evidence, is false. The only evidence relied upon by the prosecution is P.W.8, who is said to have seen the deceased along with petitioner at 9.15 p.m, quarrelling with each other, which is contrary to the contents of the Alteration Report of the investigating officer, which stated that two persons attacked the deceased on the night of 15.10.2021.

7. The learned Additional Public Prosecutor, per contra, submitted that the



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case has been established by the prosecution and the evidence of P.W.8 and the other evidence conclusively proves the involvement of the petitioner.

8. We have carefully considered the rival submissions and perused the evidence on record. We find that, apart from P.W.8, all the other witnesses had turned hostile including P.W.16, son of the deceased. P.W.8 speaks about the quarrel between the petitioner and the deceased. However, we find from the alteration report Ex.P19 that the deceased quarrelled with two others on 15.10.2021 at about 8 p.m. However, the prosecution has not investigated into this aspect. Since we find that the circumstances do not form a complete chain and have not been conclusively established, the petitioner/appellant has a fair chance of success in the appeal. We hasten to add that this is an expression of our prima facie view.

9. Considering the above facts and since the petitioner is in incarceration from 19.10.2021 and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned I Additional District & Sessions Judge, Coimbatore.
- (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.)
04.03.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 05.03.2024

Upload the order copy forthwith



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

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To

1. I Additional District & Sessions Judge, Coimbatore.
2. The Inspector of Police,
Katoor Police Station
Coimbatore
Crime No.897 of 2021
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

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Dated: 04.03.2024