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*Crl.M.P.No.412 of 2024
in Crl.R.C.No.58 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

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

Crl.M.P.No.412 of 2024
in
Crl.R.C.No.58 of 2024

Albert John Paul
S/o.Devakumar

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Walajapet Police Station,
Vellore.
(Crime No.602 of 2014)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed by the learned 2nd additional District and Sessions Judge, Ranipet in C.A.No.16 of 2021 vide judgment dated 19.04.2022, whereby confirming the conviction and sentence imposed by the learned Assistant Sessions Judge, Ranipet in S.C.No.171 of 2017 by a judgment dated 15.02.2021 and release the petitioner on bail.

For Petitioner : Mr.M.R.Thangavel

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in S.C.No.171 of 2017 by a judgment dated 15.02.2021 passed by the learned Assistant Sessions Judge, Ranipet and confirmed by the learned II Additional District and Sessions Judge, Ranipet made in C.A.No.16 of 2021 dated 19.04.2022 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner/accused in S.C.No.171 of 2017 was convicted by the trial Court by judgment dated 15.02.2021 for offence under Section 307 of IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment. Aggrieved over the same, the petitioner preferred an appeal in C.A.No.16 of 2021 before the learned II Additional District and Sessions Judge, Ranipet, Vellore District. The learned Sessions Judge, by judgment dated 19.04.2022, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, he preferred a revision in Crl.R.C.No.58 of 2024 before this Court along with suspension of sentence petition.



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3. During trial, on the side of the prosecution, PW1 to PW16 examined and marked Exs.P1 to P15 and marked material objects M.O.1 to M.O.3. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above, which was confirmed by the Appellate Court.

4. The contention of the learned counsel for petitioner is that the petitioner was charged for offences under Sections 294(b), 332, 307, 506(ii), 392 r/w 397 of IPC. The trial Court on conclusion of the trial convicted the petitioner for offence under Section 307 IPC and acquitted him for all other offences. He further submitted that the case projected against the petitioner is that on 19.11.2014 at 4.30 a.m., the petitioner was riding a Pulsar two wheeler containing Registration No.TN-23-BA-632 in the front and in the rear containing Registration No.TN-23-AD-6325 near the Walaja Tollgate and on suspicion, PW1/Inspector, who was near the Tollgate stopped the petitioner and enquired him. At that time, the petitioner took the knife from his shoe and attacked PW1 on his head and shoulder and caused serious injuries. The petitioner is said to have taken TATA SUMO vehicle of the



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police and attempted to dash against the temporary staff room of the Tollgate. Thereafter, the petitioner is said to have been arrested in this case. The trial Court found that the story projected by the prosecution to be without any evidence, hence the petitioner was acquitted from all other charges. But the petitioner was convicted for offence under Section 307 IPC primarily on the evidence of PW1 to PW4. Except PW4, other witnesses are police personnels. PW15 is the Doctor, who had given Ex.P9/Accident Register, in which, it is recorded that the injuries are simple in nature. Added to it, no other medical reports or X-ray produced in this case. Utmost it is a case of simple injury. But the trial Court finding that PW1 is the Police Inspector, convicted the petitioner and the Sessions Court also confirmed the same. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that when PW1 Seetharaman, Inspector of Police, Ranipet, who was deputed by the Deputy Superintendent of Police, Ranipet inspected the vehicles on 19.11.2014 at 04.30 hours which were moving on Vellore to Chennai National Highways on the Eastern side of Walaja Tollgate along with police



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party, the accused ride the pulsar two wheeler bearing Regn.No.TN-23-BA-632 in front portion and in rear portion containing the Regn.No.TN-23-AD-6325 and on suspicion the accused was asked to produce the documents of the said vehicle, besides he was asked to park the vehicle on the side of the road as the accused was under drunken condition. While it is so the accused prevented the public servant from discharging the duty and the accused took the knife concealed in his shoe and threatened the police using filthy languages and stabbed P.W.1 Seetharaman on his left hand shoulder and when he blocked the same, he stabbed him on his forehead stating that let him die with this besides threatened P.W.2/Rajasekar and P.W.3/Raffiq stating that if they come near to him they would be stabbed and killed. Moreover, the accused took the TATA SUMO vehicle bearing Regn.No.TN-23-G-0540 of the Police Department which was parked there damaging the automatic stopper in the tollgate causing damage worth of a sum of Rs.300/-. Hence, the compliant.

5.1.He further submitted that based on the above, a case was registered in Walajapet Police Station in Cr.No.602/2014, u/s.294 (b), 332, 307, 397 IPC on 19.11.2014 at about 07.00 hours by Tr. Naresh Kumar, then Special Sub Inspector of Police and the same was submitted before Tr.Viji Kumar,



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then Inspector of Police and took up the case for investigation. The then Inspector of Police went to the scene of occurrence, drew rough sketch, prepared observation mahazar and also examined the witnesses and recorded their statements. During the course of investigation, on 19.11.2014, then Inspector of Police arrested the accused and then produced before the Learned Judicial Magistrate No.II, Walajapet and sent to remand for judicial custody.

5.2.He further submitted that after completion of elaborate and detailed investigation, based on the witnesses statements, material evidence, on 29.12.2015, the then Inspector of Police altered the section into 294 (b), 332, 307, 506 (ii), 392 r/w.397 of IPC and filed charge sheet against the accused before the learned Chief Judicial Magistrate No.II, Walajapet and the same was taken cognizance vide P.R.C.No.4 of 2017, dated:24.08.2017. Then, this case was committed to the Assistant Sessions Judge, Ranipet and assigned in S.C.No. 171 of 2017. In order to prove the case of the prosecution, the prosecution has examined 16 witnesses and marked 15 exhibits and 3 material objects marked. On the defence side no witnesses examined and no exhibits marked.

5.3.On conclusion of trial, the trial Court by judgment dated



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15.02.2021 in S.C.No.171 of 2017 convicted the accused as stated above and the same was duly confirmed on 19.04.2022 by the Lower Appellate Court confirming the conviction and sentence under Section 307 IPC. It is submitted that the petitioner is presently undergoing the sentence period from the date of conviction 2 years 11 months (from 15.02.2021 to till date). The petitioner is now confined at Central Prison, Vellore and prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material available on record, it is seen that the occurrence had taken place near the Walaja Tollgate, wherein, CCTV is mandatory. But no CCTV recordings produced. Further, the injury sustained by PW1 is simple in nature as could be seen from Ex.P9 and evidence of PW15. The witnesses PW1 to PW3 are police personnels. PW4 seems to be a person, who passed by at that point of time. In any event, convicting the petitioner under Section 307 may not be sustainable. In view of the same, this Court finds that the finding of the Courts below needs to be reconsidered. Further the petitioner is in prison for nearly two years. Hence, this Court is inclined to grant bail to the petitioner.



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7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/Accused 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 learned Judicial Magistrate, Walaja.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) 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 revision 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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8. Accordingly, this Criminal Miscellaneous Petition is ordered.

11.03.2024
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Note: Issue order copy on 12.03.2024

To

- 1.The Inspector of Police,
Walajapet Police Station,
Vellore.
- 2.The Assistant Sessions Judge,
Ranipet.
- 3.The II Additional District and Sessions Judge,
Ranipet.
- 4.The Judicial Magistrate,
Walaja.
- 5.The Superintendent,
Central Prison, Vellore.
- 6.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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