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*Crl.M.P.No.15674 of 2023
in Crl.RC.No.1659 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

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

Crl.M.P.No.15674 of 2023
in
Crl.RC.No.1659 of 2023

B.Devasaran

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Tiruppur Central Police Station,
[Crime No.183/2023]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 09.08.2023 made in C.A.No.162 of 2023 on the file of the learned Principal District and Sessions Judge, Tiruppur, modifying and confirming the judgment dated 06.06.2023 made in C.C.No.318 of 2023 on the file of the learned Judicial Magistrate No.II, Tiruppur and enlarge the petitioner on bail pending disposal of the above revision petition.



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For Petitioner : Mr.S.Rajkumar

For Respondent : Mr.C.E.Pratap
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence of imprisonment imposed in the judgment dated 09.08.2023 made in C.A.No.162 of 2023 on the file of the Principal District and Sessions Court, Tiruppur, modifying and confirming the judgment dated 06.06.2023 made in C.C.No.318 of 2023 on the file of the learned Judicial Magistrate No.II, Tiruppur and enlarge the petitioner on bail pending disposal of the above revision petition.

2.The petitioner was convicted by the Trial Court by judgment dated 06.06.2023 in C.C.No.318 of 2023 and sentenced to undergo three months rigorous imprisonment for the offence under Section 447 IPC, to undergo three months rigorous imprisonment for the offence under Section 294(b) IPC, to undergo three years rigorous imprisonment and to pay a fine of Rs.1,500/-, in default, to undergo one month simple imprisonment for the



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offence under Section 324 r/w. 34 IPC and to undergo 2½ years rigorous imprisonment and to pay a fine of Rs.1,500/-, in default, to undergo one month simple imprisonment for the offence under Section 506(ii) IPC. All the sentences to run consecutively. Against which, the petitioner preferred an appeal before the Sessions Court in C.A.No.162 of 2023 and the learned Principal District and Sessions Judge, Tiruppur dismissed the appeal by judgment dated 09.08.2023 and the conviction and sentence passed by the Trial Court is modified as the petitioner to undergo three months rigorous imprisonment for the offence under Section 294(b) IPC, to undergo three months rigorous imprisonment for the offence under Section 447 IPC, two years rigorous imprisonment for the offence under Section 324 r/w. 34 IPC and two years rigorous imprisonment for the offence under Section 506(ii) IPC and no fine amount is imposed. All the sentences to run concurrently. Against which, the present revision is filed.

3.The case of the prosecution is that on 04.05.2023 at about 11.30 p.m., the accused persons trespassed into Karuvampalayam TASMAL Wine Shop after the same was closed and demanded the defacto complainant/Adaikalam and other two persons vi.z, Chelladurai and



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Kalidass to provide liquor, for which, the defacto complainant reported that after 10.00 p.m., they cannot sell liquor, for which, A1/Jayaram threatened them with dire consequences. The petitioner/A3 abused them in filthy languages and caught hold of Kalidass and pushed him. When the defacto complainant and Chelladurai attempted to prevent him, A2/ Manikandan took an empty liquor bottle and assaulted on the head of the defacto complainant, threatened him with dire consequences and assaulted him on his abdomen with legs. Thereafter, A1 also took the empty liquor bottle and assaulted the defacto complainant on his head and caused him bleeding injury. Hence, the defacto complainant/P.W.1 lodged a complaint before the respondent police. On receipt of the complaint, P.W.9 registered FIR//Ex.P9 in Crime No.186 of 2023 for the offence under Sections 294(b), 323, 324 and 506(ii) IPC. P.W.10/Inspector took up the investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P3 and rough sketch/Ex.P11 in the presence of witnesses P.W.5 and seized the damaged bottles M.O.1 and M.O.2 under seizure mahazar/Ex.P10 and the same was forwarded to the Judicial Magistrate under Form-91/Ex.P12. Thereafter, the CCTV footage near TASMACH shop was recovered in HP Pendrive/M.O.3. P.W.6/Doctor, Government Medical College and Hospital, Tiruppur gave



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treatment to P.W.1 and P.W.2 and issued Accident Register/Ex.P5 and Ex.P6. Thereafter, A1 to A3 were arrested and they voluntarily gave a confession statement about their involvement in the case. On completion of investigation, charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.10 examined, Ex.P1 to Ex.P13 and M.O.1 to M.O.3 marked. On the side of defence, no witnesses examined and no documents marked. On completion of trial, the Trial Court convicted the petitioner and the Lower Appellate Court confirmed the conviction and modified the sentence imposed by the Trial Court as stated above.

5.The contention of the learned counsel for the petitioner is that the petitioner has been falsely implicated in this case. He would submit that the maximum punishment imposed against the petitioner is two years and the petitioner is in prison for more than 290 days from 09.05.2023. He would further submit that the prosecution listed six cases against the petitioner in the counter, but except for one case, all the other cases are not serious in nature. He further submitted that in Crime No.674 of 2021 for the offence



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under Section 302 IPC which is pending before the Principal District Sessions Court, Tiruppur in S.C.No.28 of 2023, the petitioner was granted bail. He would further submit that the petitioner was convicted primarily on the video recording collected near the TASMAL shop but the Trial Court had given a finding that the video recordings are not clear and further, it is not with 65B certificate. Hence, inadmissible in evidence and cannot be considered. He further submitted that it is only an injury of simple in nature and the conviction under Section 324 IPC is without any supporting medical evidence. Hence, prayed for suspension of sentence.

6.The learned Government Advocate [Crl. Side] filed a counter and submitted that on 04.05.2023 at about 11.30 p.m., the petitioner/A3 along with A1 and A2 trespassed into TASMAL Wine Shop and demanded the defacto complainant and two others to provide liquor. Since the defacto complainant refused to provide liquor and reported that after 10.00 p.m., they cannot sell liquor, the petitioner and other accused persons threatened them with dire consequences, abused them in filthy languages and assaulted the defacto complainant with empty liquor bottles and caused bleeding injury. Hence, a complaint was lodged by the defacto complainant. P.W.9



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registered a case in Crime No.186 of 2023. P.W.10 took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses, recorded their statements and seized the material objects. Thereafter, the accused persons were arrested and confession statement recorded. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution ten witnesses examined and marked 12 exhibits and 3 material objects. On the side of the defence, no witnesses examined and no exhibits marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. The Lower Appellate Court dismissed the appeal preferred by the petitioner by confirming the judgment of the Trial Court and modified the sentence imposed. Hence, prays for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that the petitioner is in prison for more than 290 days. Further, out of six previous cases, five cases were not serious in nature and in one case, the petitioner was already granted bail. Hence, this Court is inclined to suspend the sentence of Imprisonment till the disposal of the revision petition.



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8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision petition and the petitioner 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 No.II, Tiruppur.

9. Further, the petitioner shall appear before the respondent police on every Monday and Friday at 10.30 a.m. until the disposal of the revision petition except on the dates when he is required to appear before the Trial Court in connection with the cases he is facing, but with previous information to the respondent police.

10. Accordingly, this Miscellaneous Petition is ordered.

23.02.2024

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To
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- 1.The Inspector of Police,
Tiruppur Central Police Station.
- 2.The Principal District and Sessions Judge,
Tiruppur.
- 3.The Judicial Magistrate No.II,
Tiruppur.
- 4.The Superintendent,
Central Prison,
Coimbatore.



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M. NIRMAL KUMAR, J.

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