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Crl.MP.No.16966/2023 in Crl.A.No.1183/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.16966/2023 in Crl.A.No.1183/2023

K.Ashok

.. Petitioner

Versus

State by
The Inspector of Police,
Udayarpalayam Police Station,
Ariyalur District.
Cr.No.471 of 2021

.. Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence and conviction of life imprisonment imposed by the learned Principal District Judge, Ariyalur in S.C.No.27 of 2022 dated 07.11.2022 and enlarge the petitioner on bail.

For Petitioner : Mr.C.Samivel



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For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgement and order dated 07.11.2022 passed in S.C.No.27 of 2022 on the file of the Principal District Judge, Ariyalur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner was the grandson of the deceased; that enraged by the fact that the deceased did not settle any property in his name and instead settled the property in favour of his cousin, the petitioner had cut the right thumb of the deceased four days before the date of occurrence, and on 02.11.2021 at about 09.30 hours, in the presence



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of P.W.2 and P.W.6, the accused assaulted the deceased with a wooden log and caused his death.

3. Heard the learned counsel for the petitioner / sole accused and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.Learned counsel for the appellant submitted that all the witnesses, except the official witnesses, had turned hostile and therefore, the conviction cannot be sustained and he prayed for suspension of sentence.

5.Learned Additional Public Prosecutor, per contra, submitted that the prosecution has proved its case beyond reasonable doubt and prayed for dismissal of the petition for suspension of sentence.

6.We have carefully considered the rival submissions and perused the records.



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7. It is the case of the prosecution that P.W.3 informed P.W.1, VAO about the occurrence and P.W.1 had lodged a complaint. However, we find that P.W.3, who turned hostile, would state that he came to know through someone that the deceased was murdered. The other eye witnesses, P.W.2 and P.W.6 and the neighbours, P.W.4 and P.W.5 had also turned hostile. *Prima facie*, we are convinced that the conviction cannot be sustained. Therefore, we are of the view that the petitioner has a fair case of success in the appeal.

8. Considering the above facts and since the petitioner is in custody from 07.11.2022, and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Principal District Judge, Ariyalur;
- (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.

[M.S.R.,J.] [S.M.,J.]
06.03.2024

Anu
Issue order copy by 07.03.2024
Upload the order copy forthwith.
Internet: Yes

M.S.RAMESH, J
and



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SUNDER MOHAN, J

Anu

To

1.The Principal District Judge, Ariyalur.

2.The Inspector of Police,
Udayarpalayam Police Station,
Ariyalur District.

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

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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