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Crl.M.P.No.13667 of 2024
in Crl.R.C.No.1647 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

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

Crl.M.P.No.13667 of 2024

in

Crl.R.C.No.1647 of 2024

Saravanan

... Petitioner/Accused

Vs.

State Rep.

The Inspector of Police,

Tirupattur Town Police Station.

Crime No.83 of 2018

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed in Crl.A.No.167 of 2023 dated 31.07.2024 passed by the learned District and Sessions Judge, Tirupattur confirming the judgment in C.C.128 of 2021 dated 18.10.2023 passed by the learned Judicial Magistrate No.1, Thirupattur, Vellore District. release the petitioner on bail pending disposal of above Criminal revision and to exempt the petitioner from surrendering before the Lower Court.

For Petitioner : Mr.E.Duraivaiyapuri



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For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed in Crl.A.No.167 of 2023 dated 31.07.2024 passed by the learned District and Sessions Judge, Tirupattur, Vellore District confirming the judgment in C.C.128 of 2021 dated 18.10.2023 passed by the learned Judicial Magistrate No.1, Thirupattur, Vellore District. release the petitioner on bail pending disposal of above Criminal revision and to exempt the petitioner from surrendering before the Lower Court.

2.The petitioner/accused in C.C.No.128 of 2021 was convicted by the trial Court by judgment dated 18.10.2023 for offence under Section 279 and 304[A] of I.P.C. and sentenced to undergo three years simple



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imprisonment and and sentenced to undergo simple imprisonment of one year for the offence under section 304[A] of IPC and to pay fine of Rs.5,000/-, in default to undergo two weeks simple imprisonment. Aggrieved against the conviction, he preferred an appeal in C.A.No.167 of 2023 before the learned District and Sessions Judge, Tirupattur. The learned Sessions Judge, by judgment dated 31.07.2024, partly allowed the appeal modifying the conviction of the petitioner for the offence under section 304[A] of IPC and sentence of one year simple imprisonment reduced to three months simple imprisonment against which, he filed a revision before this Court in Crl.R.C.No.1647 of 2024 along with the instant miscellaneous petition seeking suspension of sentence.

3.The contention of the petitioner is that on the date of occurrence there was drainage pipe line work undergoing in the scene of occurrence and hence, the vehicles could not ply in a rash and negligent manner and hit the



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rider of the bicycle. In this case, the Sub Inspector of Police, who received the complaint and recorded the statement has not been examined as a witness.

The Courts below failed to consider the above aspects. It is admitted by the witnesses that it is a busy market area and there is a auto stand and vehicles have been parked and hence, no vehicle can be driven in a rash and negligent manner in such a road and the accident took place when deceased was coming by bicycle behind the tripper lorry, for which the petitioner cannot be found at fault. All these facts are not considered by the Courts below. The learned counsel appearing for the petitioner further submitted that the petitioner is now surrendered before the trial Court and is now confined in Central Prison, Vellore.

4. The learned Additional Public submitted that on 15.04.2018 at about 08.20 hours, the deceased Sanjeevi was riding the bicycle to school and at that time the petitioner accused had driven the Tripper Lorry bearing



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registration No.TN27F 7799 towards Kovilur in a rash and negligent manner and had dashed the bicycle driven by the deceased which was witnessed by P.W.1 who was following the lorry in a two wheeler and P.W.3 and P.W.8 are eye witnesses who have supported the case of the prosecution. The Investigation Officer, on receipt of complaint, registered the First Information Report and proceeded to scene of occurrence, prepared observation Mahazar and drew rough sketch and examined witnessed and collected medical report and on completion of investigation filed final report.

5. During trial, on the side of the prosecution, PW1 to PW9 examined, Exs.P1 to P9. No material objects were marked. 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 and the Lower Appellate Court modified the same.



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6. A perusal of the evidence of witnesses, it is seen that on the date of occurrence, the road was dugged for drainage work and laying of pipe line was going on and it is busy market area and vehicles were parked on the road. In such a road, rash driving would not arise. Further in this case, the accident has taken place on the rear portion of the vehicle and when the petitioner was trying to take reverse, the accident had taken place and the deceased was hit by the rear wheel of the dipper lorry. These facts have not been considered by the Courts below. In view of the above facts and circumstances, the conviction of the petitioner needs reconsideration.

7. Accordingly, substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.



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8. Further, 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 criminal 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

15.10.2024

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

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Note: Issue order copy on 17.10.2024.



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To

- 1.The Inspector of Police,
The Inspector of Police,
Tirupattur Town Police Station.
2. The District and Sessions Judge,
Tirupattur
3. The Judicial Magistrate No.1, Thirupattur,
4. The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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