



Crl.M.P.No.16186 of 2023 in Crl.A.No.1088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16186 of 2023
in Crl.A.No.1088 of 2023

Rajesh @ Rajeshkanna @ Rajeshkumar

... Petitioner

Vs.

State Rep. by:
The Inspector of Police,
K6- T.P.Chathiram Police Station,
Chennai. (Crime No.14 of 2019).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) & (2) of Cr.P.C., to suspend the sentence of imprisonment made in the judgment dated 21.09.2023 in S.C.No.226 of 2022 on the file of the I Additional Sessions Judge at Chennai and enlarge the petitioner/Appellant on bail pending disposal of the above criminal appeal before this Court.

For Petitioner : Mr.M.Guruprasad
for Mr.P.Rajkumar

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



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ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in the judgment, dated 21.09.2023 in S.C.No.226 of 2022 by the learned I Additional Sessions Judge, City Civil Court, Chennai (Trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The conviction and sentence imposed on the petitioner by the Trial Court is as follows:

- For offence under Section 393 r/w 397 of IPC, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months.
- For offence under Section 332 of IPC, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.500/- in default to undergo Simple Imprisonment for three months.
- For offence under Section 333 of IPC, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for five years and to



pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for one year.

- For offence under Section 506(ii) of IPC, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for six months.

Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal and the Suspension of Sentence.

3.The case of the prosecution is that PW1/Sub Inspector of Police and PW2/Police Constable on 09.01.2019 at about 06.15 hours were on patrol duty. When they were near 15th Cross Street, T.P.Chathiram, Chennai, they saw the petitioner threatening one Liyagath/PW3 at knife point and taking something from his pocket. On seeing this, PW1 and PW2 rushed to the place to enquire. The petitioner fearing for arrest, threatened them with knife, abused the Police party with obscene words, left his bike and ran from the scene of occurrence. When PW1 and PW2 chased them in their bike, the petitioner attempted to attack PW1 and PW2 with his knife and he also threw the knife on the Police. PW1 and PW2 evading the attack, lost



balance and fell down from the bike. Both sustained injuries, took treatment in the Government Hospital. PW6 is the Casualty Doctor who treated PW1 and PW2. On the complaint (Ex.P1), PW7/Investigating Officer took up the investigation, arrested the petitioner, on his confession, recovered MO1 in presence of PW5, thereafter, on completion of investigation, filed charge sheet.

4.During the trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and thirteen documents marked as Exs.P1 to P13 and one Material Object (MO1) produced. On the side of the defence, no witness examined and no document marked. On completion of trial, the trial Court convicted the petitioner as stated above.

5.The learned counsel for the petitioner submitted that the case has been projected as though the petitioner used the knife MO1, threatened PW3 and from his pocket Rs.200/- was snatched in public road. In this case, PW3 not supported the case of the prosecution refused to lodge any complaint. PW1 admits that when he enquired PW3 to lodge the complaint,



he refused for the same. Hence, PW1 gave Ex.P1 Special report. PW2 is the Constable attached to the respondent Police. The case is that on 09.01.2019 when they were on patrol duty, they saw the petitioner brandishing his knife threatening PW3. The petitioner saw PW1 and PW2 coming near and he is said to have threatened them and ran away from the scene of occurrence. PW1 and PW2 chased him in bike, at that time, the petitioner threatened them and thrown knife on them. When they attempted to evade the attack, they lost balance and fell down from the bike and sustained injuries on their hands, thereafter, the petitioner ran away for his life. In this case, PW1, PW2, PW4 and PW7 are Police personnels and PW6 is the Doctor. The independent witnesses (PW3 and PW5) not supported the case of the prosecution. The recovery is said to have been taken in presence of PW5 is from a burial ground. The case as per PW1 is that at 15th Cross Street, T.P.Chathiram, Chennai, the petitioner was apprehended, at that time, he threw knife on them and ran away. When that being the case, the arrest of petitioner and recovery of MO1 becomes questionable and doubtful.



6.He further submitted that PW6 is the Doctor who treated the petitioner and issued the wound certificates (Exs.P3 & P4) for PW1 and PW2. Though PW6 states that PW1 and PW2 sustained fracture which is grievous injury, no X-ray or scan report or any corresponding reports produced by the prosecution to confirm the grievousness of injuries. The fall from the bike is due to the slip of the balance by PW1 and PW2 which is admitted. The injury is grievous in nature is not supported with any medical records. Mere statement of PW6 would not be sufficient. Likewise, for the offence of 393 r/w 397 of IPC, there is no evidence. The trial Court failed to consider these aspects and convicted the petitioner only on moral grounds not considering the evidence and materials in proper perspective.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, when PW1/Sub Inspector of Police along with PW2/Constable were on patrol duty, the petitioner, a notorious criminal, in the public using MO1 threatened PW3 and forcibly taken Rs.200/- from his pocket. PW3 fearing for life not lodged any complaint. PW1 and PW2 chased the petitioner in their bike. When they



were at 15th street, T.P.Chathiram, Chennai, the petitioner threw knife on them. When they attempted to evade the attack, they lost balance, fell down and sustained fracture injuries. PW6 Doctor attached to the Government Hospital confirmed the fracture and the treatment given to PW1 and PW2. He further submitted that the petitioner has got eight previous cases of serious in nature and he is a regular offender, menace to the society. If the petitioner is granted bail, he would commit similar offence and would cause threat to the peace and tranquillity, hence, opposed the same.

8.Considering the submissions made and on perusal of the materials available on record it is seen that eight cases have been projected against the petitioner and the cases are at the state of investigation except the case in Crime No.166 of 2017, which is culminated into S.C.No.245 of 2017, in which, the petitioner was arrayed as A2. It is seen that in this case three eye witnesses have been examined, who have not supported the case of the prosecution. As regards the merits of this case as discussed above, the manner in which the injury sustained and the recovery of M.O.1/knife is also doubtful. Further, in this case the victim/PW3 had not lodged any



complaint. These facts have not been considered by the Trial Court. Hence, the judgment of the Trial Court needs re-look and re-consideration. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

9. Accordingly, the reliefs of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal appeal:

(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 I Additional Sessions Judge, City Civil Court, Chennai.

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



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(c) Considering the objection raised by the respondent police that the petitioner has got several cases and he would indulge in similar cases in future, the petitioner is directed to appear before the respondent police daily at 07.00 p.m. until further orders.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.

08.01.2024

vv2/rsi

To

- 1.The I Additional Sessions Judge,
City Civil Court, Chennai.
- 2.The Superintendent,
Central Prison, Puzhal.
- 3.The Inspector of Police,
K6- T.P.Chathiram Police Station,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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