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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2024

Coram:

The Honourable Mr.Justice SUNDER MOHAN

**Crl.M.P.Nos.14573 & 14576 of 2024
in Crl.R.C.No.1766 of 2024**

Jackson Vijay

...Petitioner in both M.Ps

Versus

State Represented by:

The Inspector of Police,

J-2, Adayar Traffic Investigation Wing,

Adayar, Chennai – 90.

(Crime No.243 of 2018)

...Respondent in both M.Ps

Prayer in Crl.M.P.No.14573 of 2024 in Crl.R.C.No.1766 of 2024:

This Criminal Miscellaneous Petition is filed under Sections 389(1) of Cr.P.C & 438(1) of B.N.S praying to suspend the sentence imposed on 24.06.2024 in Crl.A.No.717 of 2023 on the file of the Principal Sessions Judge, Chennai by confirming the judgment of the 4th Metropolitan Magistrate, Saidapet, Chennai in C.C.No.920 of 2021 dated 19.09.2023 and enlarge him on bail and pending disposal of the Crl.R.C.No.1766 of 2024 on the file of this Court.

Prayer in Crl.M.P.No.14576 of 2024 in Crl.R.C.No.1766 of 2024:

This Criminal Miscellaneous Petition is filed under Section 528 of B.N.S praying to exemption from surrendering before the trial Court in pursuance to the judgment on 24.06.2024 in Crl.A.No.717 of 2023 on the file of the Principal Sessions Judge, Chennai by confirming the judgment of the 4th Metropolitan Magistrate, Saidapet, Chennai in C.C.No.920 of 2021



dated 19.09.2023 pending disposal of the Crl.R.C.No.1766 of 2024.

For Petitioner in both M.Ps : Mr.S.Senthilvel

For Respondent in both M.Ps : Mr.S.Balaji,

Government Advocate (Crl.Side)

COMMON ORDER

The learned IV Metropolitan Magistrate, Saidapet, Chennai vide judgment in C.C.No.920 of 2021 dated 19.09.2023, convicted the petitioner/accused for the offence under Sections 279, 337, 304(A) of IPC and 134(a,b) r/w. 187 Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act') and sentenced him as follows:

(i) For the offence under Section 279 of IPC, sentenced to undergo 1 month Simple Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 week Simple Imprisonment;

(ii) For the offence under Section 304(A) of IPC, sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.8,000/-, in default, to undergo 1 month Simple Imprisonment;

(iii) For the offence under Section 337 of IPC, sentenced to undergo 1 month Simple Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 1 week Simple Imprisonment;

(iv) For the offence under Section 134(a) of MV Act, sentenced to



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undergo 1 month Simple Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 1 week Simple Imprisonment;

(v) For the offence under Section 134(b) of MV Act, sentenced to undergo 1 month Simple Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 1 week Simple Imprisonment.

Challenging the said judgment, the petitioner/accused preferred a Criminal Appeal No.717 of 2023 before the Sessions Court, Chennai, however, the same came to be dismissed on 24.06.2024. Aggrieved over the dismissal of appeal, the petitioner/accused filed a Criminal Revision Case No.1766 of 2024 before this Court. While the same is pending, the petitioner/accused has filed Crl.M.P.No.14573 of 2024 seeking to suspend the sentence imposed on him and Crl.M.P.No.14576 of 2024 seeking to exempt him from surrendering before the trial Court.

2. The case of the prosecution is that on 27.05.2018, at around 3.30 a.m., while the petitioner/accused was proceeding in his car bearing Registration No.TN 04 AX 1000 at ECR Road, opposite RTO Office from South to North, he had hit a motorcycle bearing Registration No.TN 07 CF 2144 from behind in a rash and negligent manner, as a result of which,



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Padmanabhan (rider of the motorcycle) sustained fatal injuries and Manoj Kumar (pillion rider) sustained simple injuries. The rider of the motorcycle died on the way to hospital.

3. The learned counsel for the petitioner/accused submitted that the Courts below had erroneously appreciated the evidence on record and convicted the appellant/accused. He further submitted that Ex.P6 (Rough Sketch) clearly shows that the rider of the motorcycle did not wear helmet at the time of accident. Therefore, the learned counsel prayed this Court to suspend the sentence imposed on the petitioner/accused and exempt him from surrendering before the trial Court.

4. *Per Contra*, the learned Government Advocate (Crl.Side) appearing for the respondent police submitted that the Courts below have rightly held that the petitioner/accused is found guilty and convicted for the offence under Section 304(A) of IPC.



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5. Heard the learned counsel on either side and perused the materials available on record.

6. This Court finds force in the submissions made by the learned counsel for the petitioner/accused. The Rough Sketch and the fact that the rider of the motorcycle did not wear helmet at the time of accident are relevant facts to be examined in the above Revision Case, to assess whether the petitioner/accused is guilty of the offence under Section 304(A) of IPC.

7. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel for the petitioner/accused, this Court is of the opinion that the petitioner/accused has made out a *prima facie* case. Hence, this Court is inclined to suspend the substantive sentence imposed on him and exempt him from surrendering before the trial Court, subject to certain conditions.

8. Accordingly, these Criminal Miscellaneous Petitions are allowed and the substantive sentence imposed on the petitioner/accused is suspended and he is exempted from surrendering before the trial Court, on the



following conditions:

(i) The petitioner/accused 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 IV Metropolitan Magistrate, Saidapet, Chennai;

(ii) 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 Card or Bank Pass Book to ensure their identity;

(iii) The petitioner/accused shall appear before the trial Court at 10.30 a.m on the first working day of every English Calendar month, until the disposal of the revision case 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 of Cr.P.C and shall appear before the trial Court on any other day in lieu of his absence, as directed by the trial Court.

06.11.2024

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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To

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1. Metropolitan Magistrate No.IV,
Saidapet, Chennai;
2. The Inspector of Police,
J-2, Adayar Traffic Investigation Wing,
Adayar, Chennai – 90.
3. The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

SUNDER MOHAN, J.



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