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Crl.M.P.No.14568 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

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

Crl.M.P.No.14568 of 2024

in

Crl.A.No.1294 of 2024

Fliexthiyodar

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Jayankondam Police Station,
Ariyalur District.
(Crime No.315 of 2019)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., praying to suspend the sentence imposed by the Principal District and Sessions Judge, Ariyalur in S.C.No.63 of 2021 dated 27.09.2024 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.A.Arasu Ganeshan

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)



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ORDER

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2. The contention of the petitioner is that the Investigation Officer had wrongly invoked Section 304(ii), projecting that the petitioner was under the influence of alcohol. In this case, no Doctor has been examined to prove this fact. Further the level of alcohol in the blood, whether it was within the permissible limit or beyond, whether he was under the influence of alcohol have not been proved and no blood sample, urine sample was taken and no diagnosis has been done in this regard. The filing of the charge sheet is merely on the assumption that the petitioner consumed alcohol, which is not proper.



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3. In this case, the projected eye-witnesses, P.W.2 & P.W.3 has been shown as chance witnesses but, they are close relatives to the deceased and they are interested witnesses. Their presence in the scene of occurrence is highly doubtful. They are unable to give the manner in which the accident took place and direction of the vehicle plying. The petitioner is said to have hit the two wheeler of the deceased from the back. The report does not confirm any such damage. Exs.P9 & P10 is a Motor Vehicle Reports which has been marked through the Inspector of Police / PW.7 and not by the Motor Vehicle Inspector. Exs.P3, P7, P9 & P10 are all not marked through the respective witnesses namely, the Doctor and the Motor Vehicle Inspector. In view of the same, these documents cannot be said to be proved in the manner known to law. These factors have not been considered by the Trial Court. The learned counsel for the petitioner submitted that the Trial Court suspended the sentence of the petitioner till 27.10.2024.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, the petitioner was under the influence of alcohol, driving a car bearing Registration No.TN-49-BT-2607 from Andimadam to Jayankondam. The deceased, Manjula was riding the two wheeler on the same direction. The petitioner under the influence of alcohol



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hit the TVS Super XL / two wheeler from the behind and thereafter, the car to the right side and hit against the deceased and hence, the deceased sustained injuries and died on the spot. The accused was apprehended from the scene of occurrence and it was found that he was under influence of alcohol.

5. P.W.1 / husband of the deceased in his evidence stated that he saw the car hitting his wife's vehicle / two wheeler. P.W.2 / father-in-law of the deceased stated that he was following his daughter-in-law with the distance of 100 metres and saw the occurrence along with P.W.3, the another relative who was along with P.W.2. P.W.2 & P.W.3 had clearly stated about the accident caused by the petitioner. The drunken certificate / Ex.P7 confirms that the petitioner was in a drunken state, driving the car. The vehicles were produced before the Motor Vehicle Inspector, who had examined the vehicle and gave the certificate. The petitioner further submitted that in this case, though a charge sheet has been filed under Section 304(ii) of IPC, the Trial Court has taken note that the Motor Vehicle Inspector, Doctor not examined and drunken state of the petitioner not proved had altered and convicted the petitioner under Section 304(A) of IPC and sentenced two years. Further, it is submitted that sentence has been suspended by the Trial Court till 27.10.2024.

6. The eye-witness, P.W.1 / husband of the deceased gives totally



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different version to accident as head on. The case of the prosecution is that

the petitioner was driving the car and hit the two wheeler from the behind.

P.W.2 & P.W.3 / father-in-law and a close relative to the deceased were more than 100 metres behind the scene of occurrence. How the petitioner was taken to the Doctor, what was the alcohol percentage not proved. Further in this case, the Doctor as well as the Motor Vehicle Inspector not examined. The evidence of P.W1 to P.W.3 are contradictory. Their presence is doubtful. The road by itself is a narrow one, where there cannot be any rashness.

7. In view of the same, this Court finds that the conviction of the petitioner needs reconsideration. Accordingly, the relief 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 Principal District and Sessions Judge, Ariyalur.

(b) The petitioner/accused and the sureties



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shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar once in three months at 10.30 a.m., until the disposal of the appeal 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

23.10.2024
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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No



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To
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- 1.The Principal District and Sessions Judge,
Ariyalur.
- 2.The Inspector of Police,
Jayankondam Police Station
Ariyalur District..
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

KKN

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