



CrL.MP.No.17255/2023 in CrL.A.No.1223/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrL.MP.No.17255/2023 in CrL.A.No.1223/2023

Seenivasan

.. Petitioner

Versus

The State rep by,
Inspector of Police,
Annathanpatti Police Station,
Salem City
(Cr.No.184 of 2015)

.. Respondent

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence of imprisonment imposed in the Judgement dated 08.09.2023 in Sessions Case No.274 of 2017, and enlarge the petitioner on bail on the file of the II Additional District and Sessions Judge, Salem pending disposal of the Criminal Appeal.



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For Petitioner : Mr.R.Rajarajan
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 by judgement and order dated 08.09.2023 passed in Sessions Case No.274 of 2017 on the file of the learned II Additional District and Sessions Judge, Salem, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that A3 was a tenant under A1, and A2 is the distant relative of A1, and that A3 did prostitution in her house. Upon knowing the same, A1 and A2 had warned her not to conduct illegal business and asked her to vacate the house. The deceased, who was a customer of A3, frequently visited her house and forced her to continue their relationship, which she refused. On 24.04.2015 at about 11.00 p.m., while



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A1 and A2 were sleeping in their respective houses, they heard a sound of somebody knocking at the door and they found that the deceased was knocking at the door of A3. This led to A1 and A2 abusing the deceased and attacked him with firewood indiscriminately, and A3 is said to have instigated A1 to cause the death of the deceased.

3. Heard the learned counsel for the petitioner [A1] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4. Learned counsel for the petitioner [A1] submitted that the case was initially registered under Section 174 Cr.P.C. on 24.04.2015, and it was altered to Section 302 IPC only on 05.05.2015. Thereafter, during the investigation, A2 had allegedly given an extra-judicial confession on 14.12.2016. Subsequently, P.W.5, who according to the prosecution, was threatened by A1 claiming himself to be an eyewitness, gave a statement to the police. The learned counsel further submitted that P.W.5's conduct does not inspire confidence, and he has not explained satisfactorily as to why he



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had not informed the police about the occurrence earlier.

5.The learned Additional Public Prosecutor, per contra, submitted that P.W.5 had deposed that he was threatened by A1 and he left the village out of fear for A1; that the accused had not cross-examined P.W.5; and that the trial Court was right in convicting the petitioner.

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

7.Admittedly, the case was registered under Section 174 Cr.P.C., on 24.04.2018 and altered to Section 302 IPC ten days after the occurrence. The case had not progressed until A2 had given an extra-judicial confession on 14.12.2016. The trial Court had acquitted A2 of all the charges against him. The only evidence against A1 is the evidence of P.W.5, who claims himself to be an eye witness. Strangely, we find that P.W.5 was not examined by the Investigating Officer until A2 had given the extra-judicial confession. P.W.5's version that he witnessed the occurrence appears to be



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highly improbable considering his conduct. The petitioner, therefore has a fair chance of success in the appeal. Hence, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

8. 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:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.IV, Salem;
- (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



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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.]
11.01.2024

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Issue order copy by .01.2024
Upload the order copy forthwith.

Internet: Yes



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To

- 1.The Judicial Magistrate No.IV, Salem
- 2.The Inspector of Police,
Annathanpatti Police Station,
Salem City
- 3.The Superintendent of Prisons,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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