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Crl.M.P.No.15554 of 2024 in Crl.A.No.1359 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.15554 of 2024
in Crl.A.No.1359 of 2024

Biswajit Datta

... Petitioner/A2

Vs.

State rep. By its,
The Inspector of Police,
Manimangalam Police Station,
(Crime No.217/2009)
Kancheepuram District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430[1] of BNSS to suspend the sentence passed against the petitioner under Section 9 r/w section 25 (2) of the Arms Act to undergo RI for one year and pay a fine of rupees thousand in default he shall undergo SI for 3 months by the learned Principal District Sessions Judge, Kancheepuram in S.C.No.20 of 2024 on 11.09.2024.

For Petitioner : Mr.Syed Nizamuddin Ahmed Hussaini
For Respondent : Mr.S.Balaji
Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner in S.C.No.20 of 2024, on 11.09.2024, by the Principal District Sessions Judge, Kancheepuram and enlarge the petitioner on bail pending disposal of the Criminal Appeal.



2.It is the case of the prosecution that A1 & A2 were working as security persons in a private concern and that A1 was a licence holder of a gun, which is kept for security purpose and in order to attend nature's call, he had handed over the gun to A2 and A2 pressed the trigger, which caused fatal injury to one Dilibabu.

3.The petitioner, who is arrayed as Accused No.2 in the above Sessions Case, was convicted under Section 9 r/w section 25 (2) of the Arms Act and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for 3 months.

4.The learned counsel for the petitioner would submit that on the basis of the evidence, the trial court found that the petitioner was not guilty of the offence under Section 304 (1) IPC, however convicted the petitioner for the offence under Section 9 r/w 25 (2) of the Arms Act. He further submitted that A1 died pending trial and the judgment convicting the petitioner/A2 for the alleged offences is not in accordance with law. Thus, he prayed to suspend the sentence imposed on the petitioner.



5. The learned Government Advocate (Crl. Side) *per contra* submitted that the Courts below had considered the evidence on record and rightly convicted the petitioner and the petitioner therefore has not made out any ground for suspending the sentence and thus, opposed this petition.

6. The question as to whether the petitioner had committed the offence under Section 9 r/w 25 (2) of the Arms Act has to be examined in the appeal. The learned counsel for the petitioner has made out substantial grounds in the appeal, which requires consideration. Therefore, considering the above facts, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

7. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner/A2 is suspended and the petitioner/A2 is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties, each for a like sum to the satisfaction of the learned Additional District Judge (Fast Track Court), Kancheepuram;



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- (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 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.

08.11.2024

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Issue order copy by .11.2024
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To

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1. The Principal District Sessions Judge,
Kancheepuram.
2. The Inspector of Police,
Manimangalam Police Station,
(Crime No.217/2009)
Kancheepuram District.
3. The Additional District Judge
(Fast Track Court), Kancheepuram.
4. The Public Prosecutor,
Madras High Court.

SUNDER MOHAN, J.



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Crl.M.P.No.15554 of 2024 in Crl.A.No.1359 of 2024

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