



Crl.MP.No.18497/2023 in Crl.A.No.937/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.18497/2023 in Crl.A.No.937/2023

Muniraj

.. Petitioner/sole accused

Versus

State rep.by
The Inspector of Police
Denkanikottai Police Station,
Krishnagiri District.
(Cr.No.116 of 2018)

.. Respondent

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.4 of 2019 dated 10.08.2023 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.E.Raj Thilak



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Additional Public Prosecutor



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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 judgment and order dated 10.08.2023 passed in SC No.4 of 2019 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in the above Sessions Case, was convicted for the offence under Section 302 r/w 34 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,00,000/-, in default to undergo rigorous imprisonment for one year.

3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present petition.

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



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5. The case of the prosecution is that the petitioner and the wife of the deceased had illegal intimacy; that the deceased owed a sum of Rs.3,50,000/- to the petitioner; that when the petitioner demanded the said sum from the deceased, the deceased failed to return the same; that enraged by the said conduct, while the deceased was coming in his TVS 50 moped the petitioner came in the opposite direction in his TATA Ace, bearing Regn.No.KA-50-0626, in high speed and dashed against the deceased; and that after the deceased fell down, he cut the deceased with a sickle on his neck, hand and head, thereby causing the death of the deceased. Hence, a case was registered in Crime No.116 of 2018, against the petitioner/accused, for the offences under Sections 302 and 201 of the IPC.

6 (i) The learned counsel for the petitioner submitted that except for PW1, no other eyewitness was examined by the prosecution. PW1's presence in the scene of occurrence is highly doubtful since, he had not admitted the deceased in the hospital though he claimed so; that one Madesh has admitted the deceased, as per the evidence of PW9, which is confirmed by the entries made in the Accident Register Ex.P10; and that the



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prosecution had also not examined the said Madesh.

(ii) The learned counsel further submitted that the occurrence is said to have taken place at 7.30pm and if PW1 had really witnessed, he would have immediately admitted the deceased in the hospital. However, the records reveal that the deceased was admitted in the hospital only at 8.45pm by one Madesh. Hence, the learned counsel prayed that the sentence imposed on the petitioner may be suspended.

7. The learned Additional Public Prosecutor *per contra* submitted that the case is established by the prosecution beyond reasonable doubt; that there is no infirmity with the finding of the trial Court; and thus prayed for dismissal of this petition.

8. We have carefully considered the rival submissions and perused the records. It is seen from the entries in the Accident Register \ [Ex.P10] issued by PW9, the Doctor, who first examined the deceased that the deceased was admitted by one Madesh at 8.45pm. Further, PW13, the



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Investigation Officer had admitted in the cross examination that Madesh was not an eye witness to the occurrence. Further he had also admitted that he had not subjected the vehicle of the petitioner and the TVS 50 of the deceased to assess the damages caused to the vehicles and to prove the prosecution case. Further, the motive with regard to illegal intimacy has not been conclusively established by the prosecution, as PW4, the wife of the deceased denied the said fact. Since the said Madesh who had admitted the deceased had not been examined and the version of PW1 that he admitted the deceased appears to be improbable, the presence of PW1 in the scene of occurrence is highly doubtful

9. For the above said reasons, we are of the view that the petitioner has a fair chance of success in the appeal. However, it is made clear that the above observations are only an expression of our *prima facie* view. The petitioner is in custody from 10.08.2023 and taking into consideration the fact that the appeal is not likely to be taken up for final hearing in the near future, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to the petitioner herein.



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10. 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 Additional District and Sessions Judge, Hosur, Krishnagiri;
- (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.

[MSRJ] [SMJ]
18.01.2024

ars



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Speaking/Non-Speaking order
Neutral Citation: Yes/No
Issue order copy by 19.01.2024
Upload the order forthwith.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

- 1.The Additional District and Sessions Judge,
Hosur, Krishnagiri
- 2.The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
- 3.The Superintendent of Prisons,
Central Prison, Vellore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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