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*Crl.M.P.No.18310 of 2023
in Crl.A.No.1308 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM:

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

Crl.M.P.No.18310 of 2023
in
Crl.A.No.1308 of 2023

Chinnathambi

... Petitioner

Vs.

State rep. by
The Inspector of Police,
H-1, Traffic Investigation,
Old Washermenpet Police Station,
Chennai – 21.
[Crime No.86 of 2021]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence made in S.C.No.105 of 2022 on the file of the learned V Additional Sessions Judge, Chennai dated 06.11.2023 and enlarge the petitioner on bail.

For Petitioner : Mr.J.Jayan

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned V Additional Sessions Judge, Chennai by judgment dated 06.11.2023 made in Special S.C.No.105 of 2022 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in S.C.No.105 of 2022 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment for the offences under 304(ii) IPC. Against which, the present appeal is filed along with suspension of sentence.

3.The gist of the case is that the P.W.1/defacto complainant, who is the daughter of the deceased lodged a complaint that on 22.08.2021 at 3.45 p.m., when she was in her house she received a phone call that her father met with an accident at Parasuraman Street, Kannan Roundtana, Old



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Washermenpet, while he was pushing bicycle from east to west direction, a Goods Auto which was driven by the petitioner came from the opposite direction and dashed against her father. Immediately, the defacto complainant rushed to the scene of occurrence, found her father lying on the ground with injuries on abdomen and left hand, the Goods Auto which caused the accident was stationed nearby and the Driver found in a drunken state was standing near the Auto. P.W.1 took her father to the Government Stanley Hospital where her father was reported brought dead. Thereafter, she lodged a complaint/Ex.P1 to the respondent police. P.W.9/Investigating Officer visited the scene of occurrence, prepared observation mahazar/Ex.P7 and rough sketch/Ex.P10 in the presence of P.W.7, enquired the witnesses present in the scene of occurrence and recorded the statement of witnesses. Thereafter, P.W.9 arrested the accused and produced before the Sub-Inspector of Police, Traffic Enforcement Wing, Tondiarpet for subjecting the petitioner/accused to Breath Analyser Test. The Breath Analyser report was marked as Ex.P3. Thereafter, the petitioner was produced before P.W.6/Doctor, Government Stanley Hospital who examined the accused and found that the accused consumed alcohol, both



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eyes were congested and issued Drunkness Certificate/Ex.P6. P.W.5 is the Doctor who conducted postmortem and issued Postmortem Certificate/Ex.P4. P.W.8 is the Motor Vehicle Inspector who inspected the Goods Auto driven by the petitioner. P.W.2 and P.W.3 are the eye witnesses to the occurrence. On completion of investigation, charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.9 examined and Ex.P1 to Ex.P11 marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that admittedly in this case P.W.1/defacto complainant is not an eye witness, on receipt of information, she came to the scene of occurrence and took her father to the hospital. P.W.2 and P.W.3 are the projected eye witnesses who have not supported the case of the prosecution. The Lower Court proceeded



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on the basis that the petitioner was found near the scene of occurrence and identified by P.W.1 found in a drunken state for which the Lower Court relied on the evidence of P.W.4 and P.W.6, who issued Ex.P3 and Ex.P6. P.W.4 attached to Tondiarpet Traffic Enforcement Wing stated that he examined the petitioner on 22.08.2021 at 8.00 p.m, but in his report/Ex.P3, time record shows that it is 5.51 p.m. Hence, the arrest of the petitioner becomes doubtful. He would submit that P.W.6/Doctor who examined hte petitioner and issued Ex.P6, states that hte petitioner was examined at 910 p.m on 22.08.2021, he was smelling with alcohol and both eyes congested. This alone will not be sufficient. The petitioner had clearly stated that he was not under the influence of alcohol. Further, it is stated that the petitioner was not willing to give urine and blood samples and he had signed the same. But referring to Ex.P3 and Ex.P6, the petitioner submitted that the signature found in Ex.P3 and Ex.P6 are in variance and he had not refused to give urine and blood samples. But the Trial Court had not considered these aspects. He further submitted that Ex.P3/Breath Analyser report is a printout from the Breath Analyser Equipment but strangely in the remarks column the contents of alcohol shows as 165ml/100 ml was



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handwritten, there was an interpolation and the same has not been considered by the Trial Court. He would submit that in this case the petitioner has driven the vehicle and caused accident has not been proved. Added to it, the consumption of alcohol by the petitioner is also not proved. In support of his contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of ***Baghubhai Hassanalli Karyani vs. State of Maharashtra*** reported in ***1971 (3) SCC 930***, wherein it was held that drunkenness cannot be said to be conclusively proved unless urine or blood test carried out and merely smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech are not enough to confirm drunkenness.

6.The learned Government Advocate [Crl. Side] submits that on 22.08.2021 at about 3.45 p.m., the petitioner/accused driven the Goods Auto bearing registration No.TN-05-AD-7380 in a rash and negligent manner from west to east direction near Kannan Roundtana, Old Washermentpet and dashed against the father of the defacto complainant who was pushing his bicycle from east to west direction, by which the victim sustained abdominal injuries and laceration in his left hand. On receipt of



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information, P.W.1 rushed to the scene of occurrence and took her father to Government Stanley Hospital where he was reported brought dead. Hence, she lodged the complaint. P.W.9 took up the investigation, visited the place of occurrence, prepared observation mahazar and rough sketch and recorded the statement of witnesses. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution nine witnesses examined and marked eleven exhibits. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. Hence, prays for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that admittedly in this case the projected eye witnesses, P.W.2 and P.W.3 not supported the case of the prosecution. P.W.1 was informed about the accident and in this case there are no eye witnesses. The other circumstances projected against the petitioner is that he was in a drunken state, but in Ex.P3 there is an interpolation in remarks showing alcohol level, no explanation given. Further, the signature of the petitioner found in



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Ex.P3 and Ex.P6 are in variance. These factors have not been considered by the Trial Court. In view of the same, the conviction of the petitioner needs re-look and re-consideration. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned V Additional Sessions Judge, Chennai.

9. Further, the petitioner shall appear before the Trial Court on the first working day 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.



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10. Accordingly, this Miscellaneous Petition is ordered.

05.02.2024

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Note: Issue order copy on 06.02.2024

To

1. The Inspector of Police,
H-1, Traffic Investigation,
Old Washermenpet Police Station,
Chennai – 21.
2. The V Additional Sessions Judge,
Chennai.
3. The Superintendent,
Central Prison, Puzhal.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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