



WEB COPY



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.29 of 2024
in
Crl.A.No.6 of 2024

Rangasamy
S/o.Late Karuppa Gounder

... Petitioner

Vs.

The State rep. by:
The Inspector of Police,
Nambiyur Police Station.
Erode District.
(Crime No.336 of 2020).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in the judgment dated 22.08.2023 made in S.C.No.01 of 2021 by the learned Sessions Judge, Magalir Neethi Mandaram (Fast Track Mahila Court), Erode and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.M.Ganesh
for Mr.N.Manoharan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



WEB COPY



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in the judgment dated 22.08.2023 made in S.C.No.01 of 2021 by the learned Sessions Judge, Magalir Neethi Mandaram (Fast Track Mahila Court), Erode and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner, who is an estranged husband of the de-facto complainant, was convicted by the Trial Court in S.C.No.01 of 2021 by judgment dated 22.08.2023 for offences under Sections 294(b) and 325 of IPC and sentenced him to undergo one month simple imprisonment for offence under Section 294(b) IPC and three years rigorous imprisonment and to pay a fine of Rs.1,000/- for offence under Section 325 of IPC. Aggrieved against his conviction, the petitioner had filed an appeal before this Court in Crl.A.No.6 of 2024 along with the instant miscellaneous petitions seeking suspension of sentence and bail.



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

WEB COPY

3.The case against the petitioner is that the petitioner and the de-facto complainant/PW1 got married 32 years before. They had a son/PW3 and daughter. The petitioner had some matrimonial dispute with the de-facto complainant and living separately for more than 12 years. Suspecting fidelity of the de-facto complainant, the petitioner picked up fights with her, abused her and also assaulted her. On 05.08.2020 at about 4.00 p.m., when the de-facto complainant came out from the house, the petitioner called her using abusive language. Not minding the same, she left to milk the cow. At that time, the petitioner came behind her and stabbed her with knife. Hence, the de-facto complainant sustained injuries and later a complaint has been lodged and a case in Crime No.336 of 2020 registered for offence under Section 307 of IPC. On conclusion of investigation, charge sheet filed against the petitioner for offence under Sections 307 and 294(b) of IPC.

4.During trial, on the side of the prosecution, eight witnesses examined as PW1 to PW8 and marked Exs.P1 to P12 and marked material objects M.O.1 to M.O.3. On the side of the defence Exs.D1 and D2 marked.



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

5.The contention of the petitioner is that the petitioner was charged for offence under Section 294(b) and 307 of IPC and the Trial Court convicted the petitioner for offence under Sections 294(b) and 325 of IPC.

6.The further contention of the petitioner is that the petitioner has been falsely implicated in this case. It is not in dispute that the petitioner and the de-facto complainant were having animosity, not living together. Except PW1, other witnesses have not supported the case of the prosecution. Even PW3, son of the petitioner and de-facto complainant not supported the case of the prosecution. Both the neighbours/PW2 & PW4 and another projected eye witness PW5 have not supported the case of the prosecution. The de-facto complainant had given exaggerated version, which is not corroborated with the evidence of PW6/Casualty Doctor and Wound Certificate/Ex.P5. In this case, the Trial Court ought to have acquitted the petitioner for offence under Section 294(b) and 307 of IPC but had convicted the petitioner under



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

Section 325 of IPC, which is not proper. He further submitted that the Trial Court already suspended the sentence imposed on the petitioner. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prayed for granting suspension of sentence to the petitioner.

7.The learned Additional Public Prosecutor opposed the contention of the petitioner stating that the petitioner and de-facto complainant are husband and wife. There are totally 8 witnesses examined and 12 documents marked and material objects M.O.1 to M.O.3 marked. M.O.3/Aruval, which was used in the occurrence has been seized on the arrest and confession of the accused. Further submitted that since the witnesses hail from the same area and the dispute is between the husband and wife, the neighbours have not involved in the dispute. For that reason they are not supported the case of the prosecution. PW1 clearly stated about the manner in which the petitioner follower her and assaulted her using M.O.3. PW6 is the Doctor, who examined the victim, immediately recorded the same in the Wound Certificate/Ex.P5. The Trial Court analysing all the evidence and materials



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

had rightly convicted the petitioner under Section 325 of IPC. He further submitted that the Trial Court had already suspended the sentence of the petitioner. However, he prayed for dismissal of the petition.

8.Considering the submissions made and on perusal of the material available on record, it is seen that the petitioner was on bail during investigation and trial. It is the dispute between the husband and wife and due to grooving animosity between them, the petitioner said to have assaulted using M.O.3. The arrest and recovery of M.O.3 has not been proved in the manner known to law. Apart from PW1, other private witnesses, the neighbours including the de-facto complainant's son have not supported the case of the prosecution. Further, there was a delay in de-facto complainant appearing before the Doctor and also lodging the complaint. Further, the Trial Court had already suspended the sentence imposed on the petitioner. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

WEB COPY

9. Accordingly, the reliefs 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 Judicial Magistrate No.II, Erode.

(b) The petitioner/accused and the sureties 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 once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear



WEB COPY



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

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.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.

09.01.2024

rsi



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

To

WEB COPY

- 1.The Sessions Judge,
Magalir Neethi Mandaram (Fast Track Mahila Court),
Erode.
- 2.The Judicial Magistrate No.II,
Erode.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Inspector of Police,
Nambiyur Police Station.
Erode District.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

M. NIRMAL KUMAR., J.

rsi

Crl.M.P.No.29 of 2024
in Crl.A.No.6 of 2024

09.01.2024