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*Crl.M.P.No.19384 of 2023
in Crl.A.No.958 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM:

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

Crl.M.P.No.19384 of 2023
in
Crl.A.No.958 of 2023

Y.Mohammed Subaidhu

... Petitioner/Accused

Vs.

State rep. by
The Inspector of Police,
Ooty Town Central Police Station,
Ooty, Nilgiris.
(Crime No.159/2017)

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the sentence of imprisonment imposed in judgment dated 26.06.2023 in S.C.No.52 of 2018 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam Session Judge at Nilgiris and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.T.Balaji

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 to suspend the sentence of imprisonment imposed on him in judgment dated 26.06.2023 in S.C.No.52 of 2018 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Udhagamandalam Session Judge at Nilgiris and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner/accused in S.C.No.52 of 2018 was convicted by the Trial Court by judgment dated 26.07.2023 for offence under Sections 306 of I.P.C. and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/-. Aggrieved against the same, he filed an appeal before this Court in Crl.A.No.958 of 2023 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

3.The case of the prosecution is that on 19.02.2017, PW1/de-facto complainant lodged a complaint to the respondent police stating that he married his wife Parvin Banu 12 years before and they had two children. The



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de-facto complainant's brother one Mohammed Subaidhu had developed illicit relationship with de-facto complainant's wife and the de-facto complainant and his brother were residing in a separate house. During January, 2017, his brother returned from Muscat and on 03.02.2017, the de-facto complainant's brother and his wife eloped from the house. Thereafter, on 17.02.2017, both his wife and brother called the de-facto complainant over phone and informed him that they are staying in Royal Paradise Lodge at Ooty. Further, both of them sought apology for the betrayal committed to the de-facto complainant and his children and informed that both of them had consumed poison to end their life. Immediately, the de-facto complainant informed the Ooty police, who had gone to the lodge and rescued them and both were taken to Government Hospital, Ooty thereafter to Coimbatore Medical College and Hospital. There, the de-facto complainant's wife died on 19.02.2017 at 4.45 a.m. and a case has been registered in Crime No.159 of 2017 initially for offence under Section 174 of Cr.P.C., thereafter investigation conducted. The petitioner was made as an accused and charge sheet filed.



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4. During trial, on the side of the prosecution, PW1 to PW13 examined and marked Exs.P1 to P13. On the side of the defence one Dr.Logaraj examined as DW1 and marked Ex.X1. One Dr.Vasudevan examined as Court witness/CW1 and marked Court documents Exs.C1 and C2. 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 admitted case of the prosecution as per Ex.P1/complaint is that the de-facto complainant had lodged a complaint stating that he had received a phone call from his wife Parvin Banu and petitioner, informing that they are staying at Royal Paradise Lodge, Ooty and both of them had consumed poison to end their life. Thereafter, the police had gone to the lodge. PW3-Room boy working in Royal Paradise Lodge, showed the room to the police, which was locked from inside. Thereafter, they break open the door and found both de-facto complainant's wife and brother were in unconscious state, one person in the bed and another on the floor. They were rescued and taken to the hospital. PW6-Casualty Doctor at Ooty initially had given treatment thereafter referred them to Coimbatore Government Hospital, where the Parvin Banu



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died on 19.02.2017. The petitioner was admitted as in-patient and later saved. PW1 is the brother of the petitioner and husband of deceased Parvin Banu, PW2 is the brother-in-law of PW1. Both had deposed different concocted version in the evidence as though the petitioner present in the hospital on 18.02.2017 and on seeing PW1, he ran away from the hospital. Likewise, the investigating officer had projected as though the petitioner was arrested two months after the occurrence at Chidambaram. PW6/Casualty Doctor, who treated both deceased Parvin banu and the petitioner, in his evidence not stated about the petitioner despite specific cross examination. The Court had examined PW6/Doctor as CW1 and in his evidence he admits the treatment given to the petitioner and had produced the Accident Register/Ex.C1 dated 18.02.2017. Further, from Ex.C2 it is confirmed that the petitioner had taken treatment as in-patient. The Accident Register of the petitioner has been marked Ex.X1. Thus the entire case projected by the prosecution is on a concocted version for the reason that both Parvin Banu and the petitioner eloped, stayed in a lodge, which is proved by the evidence of PW3 as well as Ex.P2/Entry Register of the hotel Paradise. Despite available of such evidence, the Trial Court convicting the petitioner is not proper and there is no abetment by the petitioner for Parvin Banu consuming



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poison, the petitioner also consumed poison later could be saved and he is now facing gallows. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Additional Public Prosecutor opposes the contention of the petitioner stating that PW1 had informed the respondent police about the presence of his wife and the petitioner in a lodge and informed that they had consumed poison to end their life. Thereafter, the police had gone to the lodge. PW3-Room boy working in Royal Paradise Lodge, showed the room to the police, which was locked from inside. Thereafter, they break open the door and found both de-facto complainant's wife and brother were in unconscious state. Immediately they were taken to the hospital for treatment. The Parvin Banu, de-facto complainant's wife consumed poison on 17.02.2017. The petitioner escaped from the scene of occurrence and later he was arrested after two months at Chidambaram. During the trial, 13 witnesses examined. PW1 is the husband of deceased Parvin Banu, PW2 is the brother of the deceased Parvin Banu. Both of them had narrated the happenings and conduct of the petitioner. PW3-Room boy, who identified the room in which



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both the petitioner and Parvin Banu stayed together. The petitioner had given a confession before the Village Administrative Officer/PW9 about his involvement and also abetting Parvin Banu to consume poison and the Trial Court considered the defence of the petitioner by examining CW1/Doctor, who had initially treated the petitioner and also Exs.C1, C2 and X1 and thereafter only convicted the petitioner. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material, it is seen that the deceased Parvin Banu was rescued from the Royal Paradise Lodge after she consumed poison. The petitioner was also taken to the hospital. PW6/Casualty Doctor, who treated both deceased Parvin banu and the petitioner, in his evidence initially not stated anything about the petitioner. Later he was examined as CW1, he admits the treatment given to the petitioner along with the deceased in Government Hospital, Ooty. Exs.C1, C2 and X1 confirms the immediate medical treatment given to the petitioner. In Ex.P1, PW1 admits that petitioner as well as Parvin Banu both spoke to him over phone and informed about consuming poison. The petitioner was admitted in Government Hospital, Ooty, where he took



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treatment as in-patient, which was confirmed by the Court witnesses and exhibits. In view of the same, it cannot be stated that the petitioner is said to have abetted the deceased Parvin Banu. Hence, this Court finds that the conviction of the petitioner for offence under Section 306 of I.P.C. needs to be reappraised and reconsidered. 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.

8. 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 Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Udthagamandalam at Nilgiris.



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(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Sessions Judge 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 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Ooty Town Central Police Station,
Ooty, Nilgiris.
- 2.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Udhagamandalam at Nilgiris
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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