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Crl.MP.No.19443/2023 in Crl.A.No.1518/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.19443/2023 in Crl.A.No.1518/2023

Udayakumar @ Kathi Udayakumar @ Kumar @ Udayar

.. Petitioner/A1

Versus

State by
Inspector of Police,
Valasaravakkam Police Station,
Chennai.
(Cr.No.3549/2015)

.. Respondent/Complainant

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in S.C.No.218 of 2016, on the file of the learned II Additional District and Sessions Judge, Poonamallee, Tiruvallur District, by judgment dated 29.09.2022, till the disposal of the above mentioned appeal.

For Petitioner : Mr.John Sathyan, Sr. Counsel
for Mr.T.A.Narendar



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For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

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 vide judgement and order dated 29.09.2022 passed in S.C.No.218 of 2016 on the file of the learned II Additional District and Sessions Judge, Poonamallee, Tiruvallur District, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is arrayed as A1 in the above Sessions Case, was convicted for the offence under Section 302 of the IPC and sentenced to undergo life imprisonment with fine of Rs.1000/- in default to undergo simple imprisonment for six months.

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.



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4. Heard the learned counsel for the petitioner/A1 and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that on 25.10.2015 at about 9.45 p.m., the deceased Pandiyan came to a wine shop to consume liquor; that he entered into a verbal duel with the petitioner/A1 and A2 and threw a stone at the petitioner/A1; that infuriated the petitioner/A1 and A2 attacked the deceased indiscriminately with the wooden log.

6. (i) Mr.John Sathayan, the learned senior counsel for the petitioner submitted that A2 died during course of trial. Admittedly, the petitioner/A1 and A2 were not known to the witnesses; that it is the prosecution case that they were traced from a mobile phone which was found lying in the place of occurrence; that the version of the witnesses, is contrary to the complaint lodged by PW1 and therefore, the petitioner has a fair chance of success in the appeal.



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(ii) The learned senior counsel further submitted that the petitioner/A1 is in custody from 29.09.2022 and since the appeal is not likely to be taken up in the near future, he prayed for suspension of sentence.

7. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that the prosecution case has been established through the eyewitnesses of PW1 and PW2 and that there is no infirmity in the judgment of the trial Court. Hence, he prayed for the dismissal of the petition for suspension of sentence.

8. We have carefully considered the rival submissions and perused the records.

9. (i) PW1, an eyewitness to the occurrence lodged the complaint. The specific case of the defence is that the deposition of the witnesses is contrary to the earliest version in the complaint. When this was put to the investigating officer in the cross examination, the investigating officer would state that the evidence of the witnesses is in conformity with the



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complaint. However, on perusal of the complaint [Ex.P1] we find that one person assaulted the deceased. Thus, version of the witnesses that both the accused assaulted the deceased with wooden logs, is falsified and further, it is also difficult to ascertain as to which of the accused assaulted, as there is no clarity in the evidence. Therefore, we are *prima facie* convinced that the petitioner has a fair chance of success in the appeal.

10. In view of the above and considering the fact that the petitioner is in custody from 29.09.2022 and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner/A1 is suspended on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned II Additional District and Sessions Judge, Poonamallee, Tiruvallur



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District.

- (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.

[M.S.R.,J.] [S.M.,J.]
27.06.2024

ars

Issue order copy by 28.06.2024

Upload the order copy forthwith.

Internet: Yes



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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

1.The II Additional District and Sessions Judge,
Poonamallee, Tiruvallur District.

2.The Inspector of Police,
Valsaravakkam Police Station,
Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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