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Crl.MP.No.19368/2023 in Crl.A.No.1212/2022

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.19368/2023 in Crl.A.No.1212/2022

Ramki

.. Petitioner/A2

Versus

State by
Inspector of Police,
S11, Tambaram Police Station,
Tambaram,
Chennai.
(Cr.No.609/2009)

.. 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.252 of 2009, on the file of the learned Additional District and Sessions Judge, Chengalpattu, by judgment dated 17.08.2021, till the disposal of the above mentioned appeal.

For Petitioner : Mr.S.Hameed Ismail

For Respondent : Mr.A.Gokulakrishnan
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 vide judgement and order dated 17.08.2021 passed in S.C.No.252 of 2009 on the file of the learned Additional District and Sessions Judge, Chengalpattu and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is arrayed as A2 in the above Sessions Case, was convicted for the offence under Section 302 r/w 34 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 Mr.S.Hameed Ismail, the learned counsel for the petitioner/A2 and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that A1 and the petitioner/A2 were friends of the deceased; that they developed enmity towards the deceased regarding his relationship with some woman; that on 26.06.2009, at about 9.00 p.m., the accused quarreled with the deceased and with an intention to cause death, assaulted him with a knife and stones on his hands, chest and legs, as a result of which, the deceased died on the spot.

6.(i) Mr.S.Hameed Ismail, the learned counsel appearing for the petitioner/A2 submitted that the complainant in this case, for reasons best known to the prosecution, was not examined; that PW3 an eyewitness to the occurrence is not reliable as even according to her, after seeing the occurrence, she went to the house and did not report to anybody and only the next day, her statement was recorded; that in any case, the learned counsel submitted that the *overt act* attributed against the



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petitioner/A2 is that he caused injuries by throwing a stone and the fatal injury was caused by A1, who is no more.

(ii) The learned counsel further submitted that the petitioner/A2 is in custody from 17.08.2021 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 has proved its case beyond reasonable doubt 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. On perusal of the record, it is seen that the complaint has been marked through PW1, a friend of the complainant. There is no explanation



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by the prosecution as to why the complainant was not examined. Though, it is claimed by the prosecution that PW3 is an eyewitness, she does not inform anybody about the occurrence immediately. Further, it is the prosecution case that the fatal injuries were inflicted by A1, which is also confirmed by the evidence of the postmortem doctor [PW10]. Hence, we are *prima facie* convinced that the petitioner has a fair chance of success in the appeal.

10. Therefore, in view of the above and considering the fact that the petitioner is in custody from 17.08.2021 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/A2 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



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like sum to the satisfaction of the learned Additional District and Sessions Judge, Chengalpattu.

(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 Additional District and Sessions Judge,
Chengalpattu.

2.The Inspector of Police,
S11, Tambaram Police Station,
Tambaram,
Chennai.

3.The Superintendent of Prison,
Central Prison-1, Puzhal.

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

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