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Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

Backiyaraj

.. Petitioner

Versus

State by
The Inspector of Police,
Perambalur Police Station,
perambalur.
(Cr.No.15 of 2019)

.. Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence and release the petitioner / appellant on bail in S.C.No.26 of 2020 on the file of the Principal District and Sessions Court, Perambalur convicted vide judgement dated 28.08.2023.

For Petitioner : Mr.K.Prasanthan

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind



Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

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 28.08.2023 passed in S.C.No.26 of 2020 on the file of the learned Principal District and Sessions Court, Perambalur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that, on account of prior enmity, the petitioner went to the house of the deceased in an inebriated condition and attacked him with a stick on 07.01.2019 at about 06.30 p.m. As a result, the deceased sustained injuries and died in the hospital the very next day. Initially, the case was registered for the offence under Sections 294(b), 323 and 506(ii) IPC and subsequently, altered to Sections 302, 294 (b) and 506(ii) IPC.

3. Heard the learned counsel for the petitioner / sole accused and



Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.The learned counsel for the appellant submitted that deceased sustained only a minor injury as could be seen from the entries in the accident register; and that the post-mortem report had disclosed that the deceased died only due to cardiac arrest. Therefore, the learned counsel argued that the offence under Section 302 IPC would not be made out against the petitioner and prayed for suspension of sentence.

5.Learned Additional Public Prosecutor, per contra, submitted that the prosecution has established its case beyond reasonable doubt and prayed for dismissal of the petition for suspension of sentence.

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

7.We find from the evidence of P.W.8, the Doctor who made entries



Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

in the accident register, that the petitioner had suffered an abrasion measuring 0.5 x 0.5 cm on the left fore head. The post-mortem report discloses that the deceased died due to cardiac arrest. In such circumstances, the conviction of the petitioner for the offence under Section 302 IPC cannot be sustained. The petitioner, therefore has a fair chance of success in the appeal, and in any case would be liable only for a lesser offence. We hasten to add that this is our *prima facie* view.

8. Considering the above facts and since the petitioner is in custody from 29.08.2023, 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.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-,



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Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

with two independent sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate-I, Perambalur;

(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.]
06.03.2024

Anu
Issue order copy by 07.03.2024
Upload the order copy forthwith.

Internet: Yes

M.S.RAMESH, J

and



Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

SUNDER MOHAN, J

Anu

To

1.The Judicial Magistrate-I, Perambalur

2.The Inspector of Police,
Perambalur Police Station,
perambalur.

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

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

Crl.MP.No.20275/2023 in Crl.A.No.1666/2023

06.03.2024