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CrL.MP.No.19717/2023 in CrL.A.No.1608/2023

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.19717/2023 in CrL.A.No.1608/2023

Arumugam

.. Petitioner

Versus

State by
The Deputy Superintendent of Police,
Thirukovilur Sub-division,
Kallakurichi District.
(Cr.No.429/2018)

.. Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.3 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 dated 31.10.2023 till the disposal of the main Criminal Appeal.



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For Petitioner : Mr.S.Shanmuga Velayutham
Senior Counsel for
Mr.T.Balachandran

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

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 for the offence under Section 302 IPC vide judgement and order dated 31.10.2023 passed in Spl.S.C.No.3 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the deceased and the petitioner were close friends and the petitioner had called the deceased for consuming liquor; that on 16.06.2018 at about 06.00 p.m., the petitioner had taken the deceased from his house, and they both consumed liquor together; that



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thereafter, the deceased was alleged to have spoken ill about the petitioner's wife, which infuriated the petitioner and he caused the death of the deceased by throwing a big stone on his head. Initially, the case was registered under Section 307 IPC and subsequently, altered to Section 302 IPC.

3. Heard Mr.S.Shanmuga Velayutham, learned Senior Counsel for the petitioner / sole accused and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.The learned Senior counsel for the appellant submitted that the case is based on circumstantial evidence, and the prosecution has not conclusively proved the circumstances. P.W.4 was examined by the prosecution belatedly and hence his evidence that he saw the petitioner running away from the scene of occurrence cannot be treated as a circumstance. Therefore, the learned Senior Counsel submitted that since the circumstances have not been conclusively established by the prosecution, the sentence may be suspended.

5.Learned Additional Public Prosecutor, per contra, submitted that the



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prosecution has proved 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. (i) The case is based on circumstantial evidence. The prosecution relies upon motive and the circumstance of PW4 witnessing the petitioner running away from the place where the deceased was found with injuries. That apart, PW1, PW2 and PW3 have stated that the deceased went along with the petitioner on the date of occurrence for consuming liquor. PW1 and PW2 had deposed that they were aware that the petitioner was upset with the deceased, since he had spoken ill of the wife of the petitioner.

(ii) This *prima facie* appears to be improbable as it is contrary to the prosecution case that when the petitioner invited the deceased for drinking, they both went together. That apart, PW4 and PW9 are said to have seen the petitioner near the place where the deceased was injured. PW9 turned hostile. PW4, who is the brother of the deceased however was examined



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belatedly by the investigating officer as could be seen from the deposition of the investigating officer. Therefore, we are *prima facie* of the view that the circumstances have not been fully established and in any event they do not form a complete chain. The petitioner, therefore has a fair chance of success in the appeal. We reiterate that this is only an expression of our *prima facie* view.

8. Considering the above facts and since the petitioner is in custody from 31.10.2023, 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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with two independent sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of cases registered under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram;

(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

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Issue order copy by 08.03.2024

Upload the order copy forthwith.

Internet: Yes



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To

1.The Sessions Judge, Special Court for
Exclusive Trial of cases registered
under the Scheduled Caste and
Scheduled Tribes (Prevention of Atrocities) Act, 1989,
Villupuram

2.The Deputy Superintendent of Police,
Thirukovilur Sub-division,
Kallakurichi District.

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

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

M.S.RAMESH, J



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and

SUNDER MOHAN, J

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