



Crl.MP.No.19988 of 2023
in Crl.A.No.895 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.19988 of 2023
in Crl.A.No.895 of 2022

Kavin

...Petitioner/Sole Accused

Vs.

The State Represented by its
The Inspector of Police,
Selvapuram Police Station
Coimbatore District
Crime No.1209 of 2020

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence of imprisonment passed in the judgment dated 29.06.2022 in S.C. No.98 of 2021 by the Sessions Court for Bomb Blast Cases at Coimbatore, enlarge the petitioner/appellant on bail pending disposal of the above Criminal appeal.

For Petitioner : Mr.C.D.Sugumar
For Respondent : Mr.A. Gokulakrishnan
Additional Public Prosecutor
Assisted by Mr.Aravind,C.



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ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.98 of 2021 on the file of the Sessions Court for Bomb Blast Cases, Coimbatore, dated 29.06.2022 and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Sessions Court for Bomb Blast Cases, Coimbatore, in S.C.No.98 of 2021, convicted the petitioner under Section 302 IPC and sentenced him to undergo imprisonment for life with fine of Rs.2,500/, in default, to undergo Rigorous imprisonment for one year.

3.Challenging the above conviction and sentence, the petitioner/accused has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.



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4. Heard Mr.C.D. Sugumar, learned Counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the deceased was an alcoholic, drug addict and also having illicit intimacy with transgender; that he married P.W.17, who was a transgender; that since he quarreled with P.W.17 often, he used to sleep at Mariamman Temple, Panaimarathur; that the petitioner who was working as a sub staff in a Bank also used to sleep in the very same temple; and that on the night at 06.06.2020, while both of them were sleeping in the temple, the deceased compelled the petitioner to have unnatural sex and as a result of which the petitioner was enraged and stabbed the deceased with knife.

6. The learned counsel for the petitioner submitted that even if the prosecution is accepted to be true, the offence of murder would not be made out; that P.W.3 who was examined as an eye witness cannot be believed as he had not lodged the complaint and his conduct makes him unreliable; and that the extra judicial confession said to have been given by the petitioner is also unreliable.



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Hence, he prays for suspension of sentence imposed on the petitioner.

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7. The learned Additional Public Prosecutor, per contra, submitted that the prosecution has established its case beyond reasonable doubt and opposed grant of suspension of sentence.

8. We have carefully considered the rival submissions. Even according to the prosecution, the deceased had provoked the petitioner and forced him to have unnatural sex. That apart, P.W.3, who is said to have witnessed the occurrence, did not lodge the complaint and his conduct after the occurrence appears to be unnatural and therefore, his evidence is unreliable. In the circumstances, we are of the view that the petitioner/appellant has a fair chance of success in the appeal. We hasten to add that this is an expression of our prima facie view.

9. Considering the above facts and since the petitioner is in incarceration from 29.06.2022 and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Sessions Court for Bomb Blast Cases, Coimbatore.
- (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;
- (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.)
27.02.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 28.02.2024

Upload the order copy forthwith



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To

1. The Sessions Judge,
Sessions Court for Bomb Blast Cases,
Coimbatore.
2. The Inspector of Police,
Selvapuram Police Station
Coimbatore District,
(Crime No.1209 of 2020)
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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