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Crl.MP.No.20256 of 2023
in Crl.A.No.1661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.20256 of 2023

in

Crl.A.No.1661 of 2023

Moorthy

...Petitioner/Accused No.1

Versus

The State of Tamil Nadu represented by
The Inspector of Police,
Arni Taluk Police Station,
Crime No.250/2020
Thiruvannamalai District.

...Respondent/Complainant

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.85 of 2021 dated 31.10.2023 on the file of the learned Additional District Sessions Judge, Fast Track Court Arni, Tiruvannamalai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.G.Saravanan
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 herein by judgment and order dated 31.10.2023 passed in SC No.85 of 2021 on the file of the learned Additional District Sessions Judge, Fast Track Court, Arni Thiruvannamalai District, and to enlarge the petitioner on bail, pending disposal of the appeal.

2. The learned Additional District Sessions Judge, Fast Track Court, Arni, Tiruvannamalai District, in S.C.No.85 of 2021, has convicted the petitioner/first accused and sentenced him as follows:-

Accused	Offence	Sentence Imposed
A1	Section 302 of the IPC	To undergo Life



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Accused	Offence	Sentence Imposed
		imprisonment and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for two years.

3. Challenging the above conviction and sentence, the petitioner/A1, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present petition.

4. Heard Mr.G.Saravanan, learned counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. The case of the prosecution is, that the deceased and the daughter of the petitioner/first accused, were in a romantic relationship which was opposed by the petitioner/first accused and therefore, there was an enmity between the deceased and the petitioner/first accused; that when the deceased and P.W.2 went to attend the nature's call on 29.03.2020 around 07.30 am, the petitioner/first accused, along with the second accused,



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followed the deceased and P.W.2 and caused the death of the deceased by striking him with a hammer. It is the further case of the prosecution that P.W.2 had informed P.W.1 about the said incident, who in turn lodged a complaint before the Police.

6. The learned counsel for the petitioner/first accused, submitted that there is no evidence as against the petitioner inasmuch as P.W.2, who is initially said to have witnessed the occurrence turned hostile. He further submitted that there is no motive alleged against the petitioner; and that the prosecution relies upon the extra-judicial confession, which is a weak piece of evidence and cannot be the sole basis for conviction.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent/Police submitted that the prosecution has established the case beyond reasonable doubt and the Trial Court had rightly convicted the petitioner/first accused for the offence alleged and the petitioner has not made out any case for suspension of sentence.



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

9. The second accused filed the suspension of sentence petition in Crl.M.P.No.19012 of 2023, we made the following observations:

"9. We find that P.W.2 who is said to have witnessed the occurrence turned hostile and did not support the prosecution's case. The prosecution's case is based on the extra-judicial confession said to have been given by the petitioner. There are no other circumstances to corroborate the extra-judicial confession said to have been given by the petitioner.

10. From the evidence on record, we are prima facie convinced that the petitioner has fair chances of succeeding in the appeal. Hence, we are inclined to suspend the sentence. In view of the nature of allegation, we are also of the view that interest of justice



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would be made if the petitioner is directed to stay at Chennai and report before the Inspector of Police, Royapettah Police Station."

The above observations would squarely apply to the petitioner/first accused, as well. Therefore, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

10. 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/-, with two sureties, each for a like sum to the satisfaction of the learned Additional District Sessions Judge, Fast Track Court, Arni, Tiruvannamalai 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



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(iii)The petitioner is directed to stay at Chennai and report before the Inspector of Police, Royapettah Police Station, once a month, until further orders.

[M.S.R.,J.] [S.M.,J.]
21.02.2024

dk
Speaking/Non-Speaking order
Neutral Citation: Yes/No

Issue order copy by 22.02.2024
Upload the order forthwith.

Copy to:

- 1.The Additional District Sessions Judge, Fast Track Court,
Arni,
Thiruvannamalai.
- 2.The Inspector of Police,
Arni Taluk Police Station
Thiruvannamalai District.
- 3.The Superintendent of Prisons,
Central Prison, Vellore.
Vellore Disttict.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J

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