



*Crl.M.P.No.20262 of 2023
in Crl.R.C.No.2271 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.20262 of 2023
in Crl.R.C.No.2271 of 2023

Jabar @ Jabar Sithik

... Petitioner

Vs.

1.State rep. by
The Sub-Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
(Cr.No.133/2015)

2.Eliyas

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C to suspend the sentence of imprisonment passed by the Lower Appellate Court in a judgment dated 28.11.2023 made in C.A.No.46 of 2022 on the file of the learned Principal Sessions Judge, Tiruvannamalai and enlarge the petitioner on bail pending disposal of the revision petition.



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For Petitioner : Mr.A.Saranraj
For R1 : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Principal Sessions Judge, Tiruvannamalai dated 28.11.2023 made in C.A.No.46 of 2022 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The case against the petitioner/A1 is that the defacto complainant, an onion merchant was running a shop in the market. On 02.03.2015, the defacto complainant's father asked the customers of the neighbouring shop which belongs to the petitioner to stand aside, due to which there was some wordy altercation between them. At that time, the petitioner took the weight stone and hit the defacto complainant on his head and the petitioner's father who was arrayed as A2 is said to have taken a knife and threatened him.



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Hence, case was registered against the petitioner/A1 for the offence under Sections 294(b), 326 and 506(ii) IPC and against his father case registered under Sections 294(b) and 506(ii) IPC. During the trial, on the side of the prosecution P.W.1 to P.W.14 were examined and Ex.P1 to Ex.P15 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. On conclusion of the trial, the learned Judicial Magistrate NO.I, Tiruvannamalai acquitted the petitioner and his father by order dated 02.08.2017 in C.C.No.98 of 2015. Against which, P.W.1 filed an appeal before the Principal Sessions Court, Tiruvannamalai in C.A.No.46 of 2022. The Lower Appellate Court by judgment dated 28.11.2023 dismissed the appeal confirming the order of acquittal as against the petitioner and his father for the offence under Sections 294(b) and 506(ii) IPC. Further the Lower Appellate Court reversed the judgment of the Trial Court and convicted the petitioner for the offence under Section 326 IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment.



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3.The contention of the learned counsel for the petitioner is that the petitioner and the defacto complainant have some dispute in their mosque as well as running a shop in the market, for which a false case has been registered. Admittedly, in this case no material object had been produced. Likewise to convict the petitioner for the offence under Section 326 IPC for causing grievous injury, no xray was marked. P.W.8/Doctor had given evidence in favour of the petitioner which has been rightly considered by the Trial Court and acquitted the petitioner. On the other hand, the Lower Appellate Court substituted its own views on the case of acquittal which is not permissible.

4.Learned Government Advocate [Crl. Side] on the other hand submitted that in this case P.W.1/Defacto complainant lodged a complaint stating that on 02.03.2015, when he was selling vegetables at his Onion shop, his father/P.W.2 asked the customers of the neighbouring shop to stand aside, for which the petitioner/A1 abused him in filthy languages and assaulted P.W.1 using the weight stone. Further, A2 threatened the defacto complainant by showing the knife. Based on the complaint, a case was



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registered against the petitioner for the offence under Sections 294(b), 326 and 506(ii) IPC and as against the petitioner's father, case was registered for the offence under Sections 294(b) and 506(ii) IPC. The Trial Court acquitted the petitioner and his father. Thereafter, the defacto complainant preferred an appeal. The Lower Appellate Court dismissed the appeal against the petitioner and his father for the offence under Sections 294(b) and 506(ii) IPC and convicted the petitioner for the offence under Section 326 IPC.

5.Considering the submissions made and on perusal of the materials, it is seen that there is a contra judgment by the Trial Court and the Lower Appellate Court. In view of the same, the judgment of the Lower Appellate Court sentencing the petitioner for the offence under Section 326 IPC needs re-consideration. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision petition.

6.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision petition and the



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petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Sessions Judge, Tiruvannamalai.

7.Further, the petitioner shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the revision petition and if he is not able to appear before the Trial Court on that 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.

8.Accordingly, this Miscellaneous Petition is ordered.

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To

- 1.The Sub-Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
- 2.The Principal Sessions Judge, Tiruvannamalai
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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