



CRL MP(MD) No.2344 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the First day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN

and

The Hon`ble Ms.Justice R. POORNIMA

CRL MP(MD) No.2344 of 2024

IN

CRL A(MD) No.155 of 2024

JEYA KUMAR

... APPELLANT/SOLE ACCUSED

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
UTHAMAPALAYAM SUB DIVISION,
THENI DISTRICT.

2 THE INSPECTOR OF POLICE
CUMBUM NORTH POLICE STATION,
THENI DISTRICT.
CRIME NO.68/2023.

... RESPONDENTS/COMPLAINANTS

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed against the petitioner in SC No.72/2023 dt.10.01.2024 passed by the learned Mahalir Fast Track Court, Theni and enlarge the petitioner on bail pending disposal of the above appeal.



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Prayer in CRL A(MD) No.155 of 2024:

To call for the records in Learned Mahalir Fast Track Court, Theni in SC.No.72 of 2023 dated 10.01.2024 and to set aside the same.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondents, the court made the following order:-

The sole accused in S.C.No.72 of 2023 who suffered an order of conviction, by judgment, dated 10.01.2024 passed by Mahalir Fast Track Court at Theni seeks suspension of sentence. He had been convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo 6 months simple imprisonment.

2.The petitioner/accused is a Police Officer. It is the case of the prosecution that when he was Sub Inspector of Police, the deceased herein, Amudha and her husband Prakash had come over to lodge complaints against each other owing to marital discord. It is stated that at that time, he developed an infatuation with the deceased/Amudha and had continued his relationship with her. They were both living together. They were not married and Amudha was not divorced from her husband, Prakash. In the meantime, it is the further case of the prosecution that the petitioner had come across yet another couple, Damodharan and Mahalakshmi. They had also approached him in discharge of his official duty. It is stated that he had



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again enticed Mahalakshmi and this had so frustrated her husband Damodharan, then, he had committed suicide. In this connection, a separate complaint had been lodged and FIR had been registered against the petitioner and the matter is still pending. This incident later came to the knowledge of Amudha and this was the source of quarrel between Amudha and the petitioner herein. There was a complaint given by Amudha in which FIR in Crime No.514 of 2018 had been registered for the offences under Sections 323 and 506(ii) IPC. The petitioner herein was arrested, owing to the registration of that particular FIR. Subsequently, he and Amudha had entered into a compromise and recording that compromise, the FIR itself was quashed by a learned Single Judge of this Court. However, the quarrel between the petitioner and Amudha continued and it is stated that he had strangled her and that caused her death.

3.The learned counsel for the petitioner stated that the prosecution rested only on circumstantial evidence to prove the case against the petitioner herein. It is contended by the learned counsel for the petitioner that this incident is said to have taken place on 01.03.2023 at around 10.30 p.m and that, the prosecution relied on the last scene theory and there was no direct evidence of the petitioner actually committing the offence against the deceased. It is also further contended that the petitioner is said to have been taken into custody on 03.03.2023 at around 06.30 p.m.



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4.The learned counsel argued that this time of arrest as shown, is not correct and it is actually a false statement and in this regard, placed reliance on Ex.D.1 which is a certificate issued for testing the petitioner herein for Covid-19 and that blood sample was taken at 12 noon on 03.03.2023 and in that particular certificate, a telephone number had been given and it had been contended that, that particular telephone number actually was the telephone number of the Cumbum North Police Station. This fact had been put during the cross examination to the Investigating Officer who had answered in affirmative.

5.The learned counsel further argued that the FIR had been registered on 02.03.2023 at around 07.00 p.m. In this connection, he had pointed out the evidence of P.W.3 and P.W.5 who stated that even around 05.00 p.m., the Police Officials had come over to the scene of crime and therefore, contended that, that was not possible since investigation can commence only after registration of FIR and therefore, stated that the entire case of the prosecution stands falsified.

6.It is the main thrust of the learned counsel for the petitioner that since arrest is doubtful, subsequent recovery should also be held to be doubtful by this Court. It is also stated by the learned counsel that it is contended that the petitioner had absconded from judicial process. But in this connection, he also pointed out the evidence of P.W.4 who stated that the petitioner was very much available at the time



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of the final rites of the deceased and that he also cried at that particular point of time.

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The learned counsel further pointed out that the death was said to be committed by manual strangulation and pointed out the report filed owing to the injuries suffered, wherein, it had been stated that hyoid bone has not been broken and learned counsel for the petitioner stated that if there was manual strangulation, the hyoid bone would definitely have been broken and therefore, doubted the very veracity of the case of the prosecution.

7.It is further contended that the deceased is said to have died at around 10.30 p.m., but, in this connection, again the learned counsel drew the attention of this Court to the evidence of P.W.4 during cross examination where a question was put whether at 12.00 in the night, the deceased had come out keeping a pail of water and the answer by P.W.4 was that she had actually left out a pail of water.

8.Pointing out all these aspects, the learned counsel stated that the petitioner is entitled for suspension of sentence. He further pointed out that the petitioner had not been granted bail from the date of initial arrest on 03.03.2023 and therefore, stated that he had been languishing in the prison for more than 1 ½ years. It is contended that since a prima facie case had been made out by the petitioner to argue the main Criminal Appeal, and an arguable case had been made out by the petitioner in the Criminal Appeal, the petitioner is entitled for suspension of sentence.



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9.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, however, denied and disputed the contentions raised on behalf of the petitioner.

10.According to the learned Additional Public Prosecutor, the petitioner is a police officer and therefore, knows the various loopholes of the system. In this connection, the learned Additional Public Prosecutor drew attention to the reasoning of the learned trial Judge wherein, he had stated that there is every possibility that the petitioner would have subjected himself for Covid-19 test on 03.03.2023 and would have given the telephone number of Cumbum North Police Station, which telephone number is available. It is nowhere in the certificate stated that the petitioner was brought by the police for Covid-19 test. With respect to the evidence of P.W.4, the learned Additional Public Prosecutor again pointed out the reasoning of the learned trial Judge, wherein, he had stated that the question put to P.W.4 was whether at 12.00 in the night, the deceased Amudha had kept out a pail of water and the answer was that Amudha did actually keep out a pail of water, but the witness did not give the time.

11.The learned Additional Public Prosecutor further pointed out that a prima facie case had been made out by the prosecution and pointed out the antecedents of the petitioner who is also an accused in another case, wherein, FIR had been registered for the offence under Section 306 IPC and therefore, raised strong



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objections for grant of suspension of sentence.

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12.We have carefully considered the arguments advanced.

13.So far as the motive is concerned, the prosecution had established the same by the very fact that the deceased had come to know about the further intimacy of the petitioner with another lady Mahalakshmi who had, along with her husband come over to lodge a complaint and owing to that intimacy, the husband of Mahalakshmi, Damodharan had committed suicide. The deceased had actually lodged an earlier complaint against the petitioner herein for the offences under Sections 323 & 506(ii) IPC, in which, FIR had also been registered and the petitioner had also been taken into custody. Subsequently, the two of them had entered into compromise, and the FIR had been quashed. But entering into a compromise would only indicate that the offence had actually happened.

14.The learned Additional Public Prosecutor also pointed out that so far as the last scene theory is concerned, the prosecution relied on the evidence of P.W.4 and P.W.5 and also that there were CCTV coverage footages. In the evidence of P.W.5, Bharathi, it had been very clearly stated that the petitioner was living with Amudha in the very same premises.

15.There is one further aspect which will have to be examined, namely, Ex.P.27 which is the forensic examination report wherein, the material objects which had



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been seized had been forwarded to give a finding about the blood which had been deducted in the material objects, namely, Chudithar Tops, Jeans Pant and Shirt. The Pant and the Shirt had been worn by the petitioner and the Chudithar Tops belonged to the deceased. In each one of them, the blood was found to be human and the same group 'A' was found in each one of them. This can probably lead to a conclusion that the petitioner could be culpable for the death of Amudha.

16.At any rate, the very fact that the incident happened on 01.03.2023 and the body was discovered only later and the petitioner was arrested on 03.03.2023 and to pre-empt the case of the prosecution, he had subjected himself to Covid – 19 testing at 12.00 noon on 03.03.2023 and had given the telephone number of Cumbum North Police Station shows that the petitioner is adept at covering his tracks.

17.It is also seen from the records that the petitioner had not been granted bail from 03.03.2023 from the date of his first arrest, which would only indicate that though bail had been applied, Courts have not granted the same, taking into consideration the seriousness of the offence and also the antecedents of the petitioner herein. The judgment had been delivered on 10.01.2024. We can only take into consideration the period suffered by him subsequent to conviction and that is not substantial. At this juncture, we are not inclined to grant suspension of sentence.

18.Accordingly, the Criminal Miscellaneous Petition stands dismissed.



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19. We are confident that the observations made by us would not impact any further consideration to grant similar relief, if it is sought by the petitioner.

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Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
FAST TRACK MAHILA COURT, THENI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
UTHAMAPALAYAM SUB DIVISION, THENI DISTRICT.

4 THE INSPECTOR OF POLICE
CUMBUM NORTH POLICE STATION, THENI DISTRICT.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL MP(MD) No.2344 of 2024
IN
CRL A(MD) No.155 of 2024
Date :01/10/2024

RS/MMS/SAR-(17.10.2024) 9P 6C
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