



CRL MP(MD) No.4928 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Third day of July Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA
and
The Hon`ble Mr.Justice K.RAJASEKAR

Crl.M.P.(MD).No.4928 of 2024
in
Crl.A.(MD).No.389 of 2024

SUNDARARAJ

... PETITIONER/ APPELLANT/
ACCUSED

Vs

THE INSPECTOR OF POLICE
KANYAKUMARI POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO. 1127/2012

... RESPONDENT/RESPONDENT/
COMPLAINANT

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 on the petitioner by the Additional District and Sessions Judge, Fast Track court, Nagercoil, Kanyakumari District court, dt. 14.03.2024 in S.C No. 168 of 2013, pending disposal of appeal and enlarge him on bail on such terms and conditions which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in CRL.A(MD).389/2024:

Pleaded to call for records and set aside the conviction and sentence imposed on

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Appellant by the Additional District and Sessions Judge (Fast Track Court), Nagercoil, Kanyakumari District in SC.No.168 of 2013 dated 14.03.2024, allow the appeal.

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.S.HAROON AL RASHEED, Advocate for M/S.AGAM LEGAL, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The case of the prosecution is as follows:

(i) There was a dispute between P.W.1, Arulveerasadas and the accused party regarding electricity connection in the disputed pathway and the civil case also ended in favour of P.W.1. On 24.12.2012, when EB employees were taking steps for providing electricity connection to the house of P.W.1, A4 Jebaraj came there and intercepted the work by claiming right over the pathway. Hence, the employees informed P.W.1 that they will do the work with the help of Police after two days and returned without giving electricity connection. On the same day at 6.00 PM, when P.W.1 was returning to his house, near the house of the deceased Muthuraj, who is the uncle of P.W.1, the accused persons A1 to A5 came with deadly weapons and intercepted P.W.1 and quarrelled and abused him in filthy language. A1 attacked P.W.1 on his head by using an aruval and A3 attacked P.W.1 on his left hand and back with the handle of shovel and A2 threw a stone on his left rib and A4 hit the



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P.W.1 on his left hand and back by using an iron rod and A5 hit P.W.1 on his back with a stick and thereby, the accused persons attempted to murder him. When the uncle of P.W.1, Muthuraj came to prevent the attack, all the accused persons assaulted him by using the stick and iron rod and when the deceased fell down, A1, A2 and A5 stamped him on his chest. Pursuant to the same, A1 assaulted P.W.2 Christopher Babu on his front and back head using an aruval and A4 hit him using iron rod and attempted to murder him. When P.W.3 Selvabai and P.W.4 Kalaiselvi came to prevent the attack, A1 and A4 stamped them causing injuries. Thereafter, A1 hit P.W.5 Jansirani using a motorcycle, as a result of which, she fell down and sustained injuries. The injured P.W.1 and P.W.5 were taken to Kanyakumari Government Hospital by P.W.7 and one Sekar and thereafter, they were sent to Asaripallam Government Hospital for further treatment. P.W.2, P.W.3 and P.W.4 and the deceased Muthuraj were taken to A.J. Hospital for treatment and thereafter, the deceased Muthuraj was sent to Asaripallam Government Hospital and P.W.2 was sent to Muthu Neuro Hospital for further treatment. The Doctor examined the deceased Muthuraj and declared him as 'brought dead' and sent him to mortuary.

(ii) On information, P.W.18 Sub Inspector of Police went to the Asaripallam Government Medical College Hospital and received the complaint Ex.P1 from P.W.1, who was undergoing treatment. Based on the complaint Ex.P1, FIR (Ex.P18) was



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registered in Crime 1127/2012 for the offences under Sections 147, 148, 341, 294(b), 323, 324, 307 and 302 IPC.

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(iii) P.W.19, Inspector of Police, took up the case for investigation and visited the scene of occurrence and prepared observation mahazar and rough sketch and examined the witnesses and recorded their statements. Thereafter, he went to the hospital and examined the witnesses P.W.1 to P.W.5 and recorded their statements. P.W.19 went to the mortuary and conducted inquest in the presence of the witnesses and prepared the inquest report and thereafter, he sent the body of deceased for postmortem. Thereafter, P.W.19 arrested the accused persons A1 and A3 to A5 in the presence of the witnesses and on the basis of their confession, he recovered the weapons and motorcycle under Mahazar.

(iv) Thereafter, the case was handed over to P.W.20 Thangaraj, Inspector of Police. P.W.20 took up the case for further investigation and examined the witnesses and recorded their statements. After collecting the medical and forensic evidence, he completed the investigation and filed the final report under Section 173(2) of the Cr.P.C.

(v) After taking the final report in P.R.C.No.14/2013, the learned Judicial Magistrate No.1, Nagercoil had furnished the copies of the case records to the accused on free of cost under Section 207 Cr.P.C. and the case was committed to the



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learned Additional District and Sessions Judge, Kanyakumari at Nagercoil. The case was taken up in S.C.No.168/2013.

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(vi) On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the Trial Court, after hearing the accused, framed the following charges:

Accused	Charges framed
A1	147, 148, 307 r/w 34, 302 r/w 34, 324 r/w 34 (2 counts) IPC and Section 4 of TNPHW Act
A2, A3 and A5	147, 148, 307 r/w 34, 302 r/w 34 IPC
A4	147, 148, 307 r/w 34 (2 counts), 302 r/w 34 and 324 r/w 34 (2 counts) IPC

(vii) When questioned, the accused pleaded 'not guilty'. To prove the case, the prosecution examined 21 witnesses and marked 34 exhibits and 8 material objects. Court exhibit Ex.X1 was also marked. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

(viii) By judgment dated 14.03.2024, the Trial Court found the accused A1 to A5 guilty for the offences under Sections 147, 148, 307 r/w 34, 302 r/w 34 IPC. A1

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and A4 were found guilty for the offences under Sections 307 r/w 34 (2nd count) and 323 (2 counts) IPC. The Trial Court convicted and sentenced the accused persons as follows:

Accused	Section of law	Sentence of Imprisonment	Fine amount
A1 to A5	302 r/w 34 IPC	Life imprisonment	Rs.5000/- in default to undergo one year rigorous imprisonment
	307 r/w 34 IPC	10 years rigorous imprisonment	Rs.3000/- in default to undergo six months rigorous imprisonment
	148 IPC	One year rigorous imprisonment	-
A1 & A4	307 r/w 34 IPC (2 nd count)	10 years rigorous imprisonment	Rs.3000/- in default to undergo six months rigorous imprisonment
	323 IPC (2 counts)	Six months rigorous imprisonment	-

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A1 was acquitted of the charge under Section 4 of TNPHW Act. Sentences were ordered to run concurrently and the period of incarceration already undergone by the accused was ordered to be set off under Section 428 Cr.P.C.

2. Challenging the said conviction and sentence, Sundarraaj/A3 has filed Crl.A. (MD).No.389 of 2024 and pending appeal, he has filed the present Criminal Miscellaneous Petition seeking for suspension of sentence.

3. The learned counsel for the petitioner/A3 would submit that the petitioner/A3 is aged about 73 years and he has been falsely implicated in this case. Even as per the case of the prosecution, the alleged occurrence is said to have happened during a quarrel between the accused party and the deceased regarding a pathway dispute. The petitioner is said to have assaulted the deceased Muthuraj with the handle of the shovel on his nose. As per the evidence of P.W.17 postmortem Doctor, it is not a fatal injury and the fatal injuries are on account of the other accused stamping the deceased after he fell down and another accused assaulting him with an iron rod on the thorax area. The learned counsel would further submit that the petitioner has no previous cases against him. The petitioner was on bail during trial and he has not misused the liberty granted to him and that due to his old age, he is also suffering from various ailments including enlargement of prostate gland. Hence, the learned counsel seeks for grant of suspension of sentence.



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4. The respondent has filed a detailed counter. The learned Additional Public Prosecutor appearing for the respondent would submit that there was a dispute between the accused party and the deceased relating to providing electricity connection in a disputed pathway, due to which, the petitioner/A3 along with other accused have joined together and assaulted the deceased with a handle of shovel and the other accused have assaulted him. A2 had assaulted the deceased with iron rod and after the deceased fell down, the other accused stamped on his chest and hip resulting in various internal injuries and he was taken to the hospital, where he was declared as 'brought dead'. Hence, the learned Additional Public Prosecutor objected for grant of suspension of sentence and prayed for dismissal of the application.

5. Heard the learned counsels on both sides and perused the materials available on record.

6. The petitioner is aged about 73 years and taking into consideration his medical condition and the overt act attributed against him, this Court is inclined to grant suspension of sentence to the petitioner/A3.

7. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner/A3 is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for



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Rs.25,000/- (Rupees twenty five thousand only), with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Judicial Magistrate No.1, Nagercoil.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioner shall report before the learned Judicial Magistrate No.1, Nagercoil in the first working day of every English calendar month at 10.30 AM until further orders.

sd/-
03/07/2024

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05/07/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
FAST TRACK COURT, NAGERCOIL,
KANYAKUMARI DISTRICT.

2 THE JUDICIAL MAGISTRATE NO.I,
NAGERCOIL, KANYAKUMARI DISTRICT.

3 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, KANYAKUMARI DISTRICT AT NAGERCOIL.



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4 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

5 THE INSPECTOR OF POLICE
KANYAKUMARI POLICE STATION,
KANYAKUMARI DISTRICT.

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

+1 CC to M/s.P.MALINI, Advocate (SR-7331[I] dated 03/07/2024)

ORDER IN
CRL MP(MD) No.4928 of 2024
Date :03/07/2024

SA/SAR. /05.07.2024/10P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.