



CRL MP(MD) No.10366 of 2023

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

Thursday, the Eleventh day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.10366 of 2023

IN

CRL A(MD) No.574 of 2023

**SENTHILKUMAR @ SELVAKUMAR ... PETITIONER/ APPELLANT/ ACCUSED
Vs**

**THE INSPECTOR OF POLICE
KARUNKAL POLICE STATION,
KANYAKUMARI DISTRICT.**

(CRIME NO.965 OF 2001) ... 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 enlarge the petitioner on bail by Suspending the Sentence imposed upon the petitioner in Sessions Case no.104 of 2004 on the file of the Learned Assistant Sessions Judge, Iranial, Kanyakumari District by Judgment dated Judgment dated 23.02.2023 pending disposal of the main Criminal Appeal.

PRAYER IN CRL A(MD)No. 574 of 2023:

To call for the records in Sessions Case No. 104 of 2004 on the file of the Learned Assistant Sessions Judge, Iranial, Kanyakumari District and set aside the judgment dated 23.02.2023 and Acquit the appellant of the charges levelled against him.



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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 M/S.ILAYARAJA.R, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate on behalf of the Respondent, the court made the following order:-

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 23.02.2023 made in S.C.No.104 of 2004 on the file of the learned Assistant Sessions Judge, Iranial, Kanyakumari District and to enlarge him on bail till the disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

There are two accused in this case. The petitioner/accused is Accused No.2. The defacto complainant/Aanthonygildass was developing contacts with one Johnson. There was previous enmity between the said Johnson and the family of the accused. The accused had common intention to kill the defacto complainant and in furtherance of that intention on 11.09.2001 at about 8.45 a.m. when the defacto complainant along with associates were going ITI, on the way the accused armed with knife and attacked him with knife indiscriminately and caused grievous injuries and thereby the accused committed offence under Sections 341, 326, 324 and 307 r/w

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34 of IPC. FIR was registered in Crime No.965 of 2001 against the accused. P.W.6/Inspector of Police did investigation and laid charge sheet. The petitioner/Accused No.2 and another accused were charged for the offences under sections stated above.

3. To prove the charge, the prosecution examined 6 witnesses as P.W.1 to P.W.6 and marked 8 exhibits as Ex.P1 to Ex.P8. Two material object were marked as M.O.1 and M.O.2. On the defence side, no witness was examined and no exhibit was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/Accused No.2 and another accused guilty for the offence under Sections 341 and 307 r/w 34 of IPC and convicted and sentenced them to undergo simple imprisonment for a period of one month each and to pay a fine of Rs.100/- each, in default, to undergo simple imprisonment for a period of one week each for the offence under Section 341 of IPC and sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for a period of one year each for the offence under Section 307 r/w 34 of IPC by passing impugned judgment dated 23.02.2023.

4. Aggrieved by the conviction judgment, the petitioner/Accused No.2 has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail



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and P.W.5 who deposed about the injuries sustained by P.W.1 corroborating the injuries deposed by P.W.1. The case against Accused No.3 was split up and after contest, he was acquitted which based on evidences adduced in that case. That will not be applicable to the petitioner/Accused No.2. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the weapon and X-ray of the injured were not produced to substantiate the case of prosecution. Moreover, it is submitted that the statements of witnesses were sent to the Court belatedly and the prosecution has not examined any independent witnesses. However, these are to be decided while deciding the appeal on merits.

9. The learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain admission of witnesses. The learned Government Advocate (Crl.side) has not raised any serious objection. The fact remains that there are arguable points involved in this criminal appeal and further

the criminal appeal is of the year 2023 and the same is not likely to be taken up for



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final hearing in the near future. The petitioner/appellant, who is having tender aged children is in prison for more than one year from 23.12.2022. In the above circumstances and considering the incarceration period, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) The petitioner/ Accused No.2 is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Eraniel;

(ii) 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 to ensure their identity; and



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

+1 CC to M/s.R.ILAYARAJA, Advocate (SR-618[I] dated 11/01/2024)

ORDER
IN
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IN
CRL A(MD) No.574 of 2023
Date :11/01/2024

PKP/SAR- /11.01.2024/ 8P/ 8C

Madurai Bench of Madras High Court is issuing certified
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