



CRL MP(MD) No.11055 of 2023

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

Monday, the Thirtieth day of September 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.11055 of 2023
in
CRL A(MD)No.627 of 2023

1 SHANMUGANATHAN

2 PANCHAVARNAM

... PETITIONER/PETITIONER

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
THIRUCHULI DIVISION,
VEERACHOLAN POLICE STATION,
VIRUDHUNAGAR DISTRICT,
CRIME NO.112/2014

2 JEYATHIRAN

... RESPONDENT/RESPONDENT

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 petitioner in Spl.SC.No.2 of 2015 on the file of the learned Special Court for SC/ST Act cases, Virudhunagar at Srivilliputhur dated 12.07.2023 and enlarge the petitioner on bail pending disposal of the appeal.

PRAYER in CRL A(MD)No.627 of 2023:

To call for the records relating to the judgment passed by the learned Special



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Judge, Special Court for trial of SC/ST Act cases, Virudhunagar at Srivilliputhur in Spl.S.C.No.2 of 2015 dated 12.07.2023 and 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 M/S.AZAGARSAMI.AK, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the 1st Respondent, the Court made the following order:-

A1 and A2 in Spl.S.C.No.02 of 2015, who had suffered an order of conviction by judgment dated 12.07.2023 by the Special Court for trial of SC/ST (POA) Act, Virudhunagar at Srivilliputhur and sentenced them to undergo rigorous imprisonment for life imprisonment for the offence under Section 302 IPC r/w 3(2) (v) of SC/ST (POA) Act, 1989 and to pay fine of Rs.5,000/- in default to undergo six months rigorous imprisonment, have filed the present application seeking suspense of sentence.

2.Both the petitioners are spouses. There was yet another accused, who was their own son, who was a juvenile, but after due proceedings before the Juvenile Justice Board, had been sentenced to community service for a period of two weeks.

3.In the affidavit filed in support of this application seeking suspension of sentence, it had been stated that the entire dispute arose over a land and that the



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deceased had entered into the land which was questioned by the son of the petitioners herein and he brought over the deceased to these petitioners and it is stated that the second petitioner/wife had instigated the first petitioner/her husband and her son to attack the deceased and they also attacked him with an iron rod. This incident took place at around 12.00 noon on 12.10.2014.

4.It is contended by the learned Counsel for the petitioners that the deceased was taken over to the hospital only at 08.30 pm to a private hospital at Paramakudi and later referred to the Government General Hospital, Madurai. The deceased was in hospital for a period of two days and later succumbed to the injuries and died on 14.10.2014. In respect of this offence, FIR in Cr.No.112 of 2014 had been registered by the Veeracholan Police Station at Virudhunagar District for offences punishable under Sections 294(b), 324 and 506(ii) of IPC. Later, the FIR had been altered by including Sections 302 IPC r/w 3(2)(v) of SC/ST (POA) Act, 1989, since it was later found that the deceased belonged to SC/ST community.

5.In view of that particular fact, we have directed notice to the de-facto complainant, who had been impleaded as R2 and the learned Counsel had also entered appearance on behalf of the de-facto complainant/R2.



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6.The learned Counsel for the petitioners stated that there are arguable points in the Criminal Appeal. It had been stated that the travel time between the place of occurrence and the hospital would be hardly taken 30 minutes, but after much delay between 12.00 noon and 08.30 am., the deceased had been taken to hospital.

7.The learned Counsel for the second respondent however contested that particular statement and stated that initially, the deceased was taken to a private hospital at Veeracholan and they had refused to admit him and later, he had to be admitted to the Government Hospital.

8.The learned Counsel for the petitioners further pointed out that though the incident took place on 12.10.2014 at 12.00 noon, the FIR was registered only at 06.30 am on 13.10.2014 and that delay between the time of occurrence and the time registration of FIR had not been properly explained and further pointed out that the FIR was forwarded to the Court and reached the Court only on 14.10.2014 at about 12.30 in the afternoon. It is thus stated that there had been a delay not only in registration of the case but also forwarding the copy of the FIR to the Court.

9.It was also stated that the entire incident took place owing to a quarrel over entry into the land by the deceased, which was objected to by the minor son of the petitioners/appellants and the quarrel had escalated into violence. It had also been stated that PW-3 had not whispered the date or month or year of the alleged



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occurrence. The learned Counsel therefore stated that these points will have to be examined during the course of the appeal. It had also been stated that MO-3 and MO-4 had not been identified in appropriate manner during the course of trial.

10.The learned Counsel for the second respondent placed reliance on the observation of the Hon'ble Supreme Court in *S.L.P.(Crl) Diary No.27298 of 2024, Bhupatji Sartajji Jabraji Thakor vs vs State of Gujarat*, in which the order was pronounced on 05.07.2024. That was an application seeking to condone the delay in filing the Criminal Appeal. The delay was condoned and in the course of suspension of sentence, the Hon'ble Supreme Court had observed as follows in paragraph 7:

“7.There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not



permissible for the court to undertake the exercise of re-appreciating the evidence.

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The emphasis is on the word “palpable” and the expression “apparent on the face of the record”.”

11.The Hon'ble Supreme Court had also examined the order of High Court which declined to suspend the sentence, since the High Court had found that there was a *prima facie* case established against the appellant before the trial Court. The Hon'ble Supreme Court in paragraph 10 had also observed as follows:

“10.Issue notice for the purpose of hearing the State as regards the plea for bail considering the mitigating circumstances pointed out by the learned counsel appearing for the petitioner, returnable in four weeks.”

12.The learned Counsel placing reliance on the observations in para 7 extracted above and stated that unless there is anything palpable or apparent on the face of the records, normally, the sentence should not be suspended.

13.In the instant case, one factor which has to be examined and for which explanation had not been given by the prosecution during the course of trial is the delay in lodging the complaint and consequent registration of the FIR and in forwarding the FIR to the Court. The further factor to be examined is the fact that the entire occurrence happened owing to a sudden quarrel and it is argued that there was no prior determination to commit the offence. The third aspect is that the



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deceased had been in hospital for two full days and later succumbed to injuries.

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These are all aspects which have to be examined during the course of appeal, particularly, the delay in lodging of the complaint and the delay in forwarding the FIR to the Court. Additionally, the petitioners have filed separate affidavits before this Court and the relevant portion of the same are as follows:

“3.I humbly submit that I filed suspension of sentence before this Hon'ble Court in Crl.M.P.(MD)No.11055 of 2023 and the matter came up for hearing on 18.09.2024 and I swear to file undertaking affidavit that I will not enter into jurisdictional police station limit and I will not enter into my village also.”

14.The entire incident had taken place in Virudhunagar District which is quite some distance from Vadipatti and in entirely different District, though adjoining District. Both petitioners have been in confinement on and from 12.07.2023.

15.In view of all these factors, we are inclined to entertain this petition and to suspend the sentence imposed against the petitioners. Accordingly, this Criminal Miscellaneous Petition is ordered and the imprisonment ordered by the trial Court through the impugned judgment, dated 12.07.2023 is suspended subject to the following conditions:-

i.The petitioners/ A1 and A2 are directed to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) each with two sureties, of



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whom, one should be a blood related surety, each for a like sum to the satisfaction of

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the learned Special Court SC/ST Act Cases, Virudhunagar at Srivilliputhur.

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 petitioners shall report before the Inspector of Police, Vadipatti Police Station, Madurai District, every Saturday at 10.30 am until further orders.

iv. It is made clear that the petitioners shall not enter into the jurisdictional limits of the respondent Police Station until further orders.

sd/-

30/09/2024

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/10/2024

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

CMR

TO

1 THE SPECIAL JUDGE,
SPECIAL COURT FOR TRIAL OF SC/ST ACT CASES,
VIRUDHUNAGAR AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.



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3 THE SUPERINTENDENT
CENTRAL PRISON FOR WOMEN, MADURAI.

4 THE DEPUTY SUPERINTENDENT OF POLICE,
THIRUCHULI DIVISION,
VEERACHOLAN POLICE STATION,
VIRUDHUNAGAR DISTRICT,

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

COPY TO:

THE INSPECTOR OF POLICE
VADIPATTI POLICE STATION, MADURAI DISTRICT.

+1 CC to M/s.AZAGARSAMI.AK, Advocate (SR-12044[I] dated 01/10/2024)

ORDER
IN
CRL MP(MD) No.11055 of 2023
in
CRL A(MD)No.627 of 2023
Date :30/09/2024

SS/MMS/SAR- /03/10/2024/9P/8C

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