



Thursday, the Thirteenth day of June Two Thousand and Twenty Four

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

SULTHAN ALAVUDEEN ... PETITIONER/APPELLANT  
/SOLE ACCUSED

THE INSPECTOR OF POLICE  
SOUTH GATE POLICE STATION,  
MADURAI CITY.  
(CR NO.479/2018) ... R

... 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 Learned I Addl District and Sessions Judge, Madurai in SC No.51/2019 dt.20.04.2022 and enlarge the appellant on bail pending disposal of the Criminal Appeal .

PRAYER IN CRL A(MD)No. 606 of 2022:

To call for the records in S.C.No. 51 of 2019 dated 20.04.2022 on the file of the Learned I Additional District and Sessions Judge, Madurai and set aside the same.



**CRL MP(MD) No.11918 of 2022**

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.RAJINI.A, 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) One Mahendra Raja (P.W.2) is an Advocate by profession. He and the petitioner are classmates. Through Mahendra Raja (P.W.2), the deceased Basheer Mohamed @ Basheer, P.Ws.3 to 10 got acquainted with the petitioner. On the fateful day i.e.22.07.2018, at about 08.00 p.m., Mahendra Raja (P.W.2), Veerar Abdullah (P.W.3) and Vinodhkumar @ Vinoth (P.W.7) and the deceased Basheer were consuming liquor, in Queen Bar at Solaialagupuram. At that time, Annadhurai (P.W.10) came there and the petitioner had also brought liquor for his share and consumed it along with them. During such time, the petitioner had taken his money purse. At that time, Annadhurai (P.W.10) made a comment that the money purse is very nice, for which the petitioner had replied that he purchased it for Rs.500/- and gave one money purse to Mahendra Raja (P.W.2) at free of cost. However, on hearing the words "at free of cost", Mahendra Raja (P.W.2) got angered and thrown the money purse on the face of the petitioner. The deceased Basheer had also asked



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about it with the petitioner. In this regard, a quarrel arose and Annadhurai (P.W.10) interfered and pacified them.

(ii) Prior to the said incident, already they planned to go to Courtallam on 27<sup>th</sup> to 29<sup>th</sup> of July, 2018. Initially, the petitioner was also willing to accompany them, but, at the last moment, he refused to go to Courtallam. In such circumstances, Mahendra Raja (P.W.2) asked the petitioner, if you had already informed his unwillingness, some other person could have been arranged for Courtallam and now, who will bear his share amount of Rs.3,000/-. At that time, a quarrel arose between Mahendra Raja (P.W.2), Veerar Abdullah (P.W.3), deceased Basheer and the petitioner. Whiles, Vinodhkumar (P.W.7) asked the petitioner to go to home, since he had consumed more quantity of liquor and sent him in his two-wheeler.

(iii) Thereafter, on the same day, at about 10.30 p.m., Mahendra Raja (P.W.2), Veerar Abdullah (P.W.3), Mohamed Yusuf (P.W.4), Sankar (P.W.5), Vikki @ Vignesh (P.W.6), Karthick (P.W.8), Meenakshi Sundaram (P.W.9) and the deceased Basheer were talking in front of one Balan Watch Shop at South Veli Street. At that time, Mahendra Raja (P.W.2) and the deceased called the petitioner through mobile phone and the petitioner did not attend the call. Again they called the petitioner and informed him that if he is not coming to Courtallam, they will come to his house. At

that time, Syed Ibrahim (P.W.1), brother of the deceased Basheer came there on



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searching the deceased. The petitioner also came there in his Scooty Pep two-wheeler bearing registration No.TN59 AB4241. On his arrival, a quarrel arose between him and the deceased Basheer and Mahendra Raja (P.W.2). During the quarrel, the deceased Basheer pushed the petitioner and in the impact, the petitioner fell down. Immediately, the petitioner took two knives (M.Os.1 and 2), which he had kept in his hip, and stabbed on the left side of chest and stomach of the deceased Basheer. When Veerar Abdullah (P.W.3) and Mohamed Yusuf (P.W.4) interfered to rescue the deceased, the petitioner had stabbed on the left side stomach of Veerar Abdullah (P.W.3) and right side back of Mohamed Yusuf (P.W.4). When Syed Ibrahim (P.W.1), Mahendra Raja (P.W.2), Sankar (P.W.5) and Meenakshi Sundaram (P.W.9) intervened, the petitioner threatened them with dire consequences and thereafter, he ran away from the place of occurrence.

(iv) Sankar (P.W.5) and Vikki (P.W.6) took the deceased to Vadamalaiyan Hospital in a two-wheeler and Karthick (P.W.8) and Meenakshi Sundaram (P.W.9) took Veerar Abdullah (P.W.3) and Mohamed Yusuf (P.W.4) in an Autorickshaw to the same Hospital. Syed Ibrahim (P.W.1) and Mahendra Raja (P.W.2) followed them in a two-wheeler. In the Hospital, the Duty Doctor referred the injured persons to the Government Hospital and accordingly, they were brought to Government Hospital, where Dr.Jeyakumar (P.W.22), a Duty Doctor, declared the deceased Basheer



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brought dead. Dr.Karthiyanini (P.W.23), a Duty Doctor, admitted Veerar Abdullah (P.W.3) and Mohamed Yusuf (P.W.4) as inpatients and issued Wound Certificates (Exs.P7 and P8).

(v) Thereafter, Syed Ibrahim (P.W.1) went to the respondent - Police Station and gave a complaint (Ex.P1) on the next day at 03.00 a.m. Pursuant to the said complaint (Ex.P1), a case in Crime No.479 of 2018 (Ex.P12-A) came to be registered for the offence under Sections 302, 307 (2 counts) and 506(ii) I.P.C.

(vi) Thereafter, Ganesan (P.W.27) took up the investigation and examined the witnesses and filed the final report in P.R.C.No.129 of 2018, before the learned Judicial Magistrate No.IV, Madurai, under Sections 302, 307 (2 counts) and 506(ii) I.P.C., against the petitioner.

(vii) On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Sessions, Madurai, and was made over to the I Additional District and Sessions Court, Madurai, for trial in S.C.No.51 of 2019.

(viii) The Trial Court, after hearing the accused, framed two charges against the petitioner, as detailed below:

| Charge | Penal Provisions      |
|--------|-----------------------|
| 1.     | 302 I.P.C.            |
| 2.     | 307 I.P.C. (2 counts) |



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(ix) When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 27 witnesses and marked 19 exhibits and 09 material objects. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he 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.

(x) By judgment and order dated 20.04.2022, the Trial Court found the accused guilty for the offence under Sections 302 and 307 (2 counts) I.P.C., and convicted and sentenced him, as detailed below:-

| Section of Law        | Sentence<br>imprisonment                                        | of   | Fine amount                                                               |
|-----------------------|-----------------------------------------------------------------|------|---------------------------------------------------------------------------|
| 302 I.P.C.            | To undergo imprisonment.                                        | life | Rs.3,000/-, in default to undergo one year simple imprisonment.           |
| 307 (2 counts) I.P.C. | To undergo ten (10) years rigorous imprisonment for each count. |      | Rs.1,000/-, in default to undergo six months imprisonment for each count. |

The sentences imposed on the accused were ordered to run concurrently.

2. Challenging the said conviction and sentence, the petitioner has filed CrI.A. (MD) No.606 of 2022 and pending the appeal, he has filed the above miscellaneous petition seeking to suspend the sentence imposed on him.

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3. Learned counsel appearing for the petitioner would submit that it is an admitted case of Mahendra Raja (P.W.2), Veerar Abdullah (P.W.3) and Mohamed Yusuf (P.W.4) that the petitioner was away from the occurrence place and it is them, who had called the petitioner through mobile phone and asked him to come to wine shop and when the petitioner came there, they started quarrel with him and pushed him, due to which, he fell down. She would further submit that even as per the prosecution version, the occurrence was happened on the initial attack by the deceased Basheer and Mahendra Raja (P.W.2) and the petitioner had not any intention to cause injuries. Hence, the Trial Court, without proper analysis of evidence, has found the accused guilty. Further, there are also several other grounds in the appeal and the likelihood of the appeal being taken up for final hearing in the near future is also not possible, thereby she prayed for suspension of sentence.

4. Learned Additional Public Prosecutor appearing for the respondent, on instructions, would submit that there are injured witnesses, who have also spoken about the incident and the overt act of the petitioner. He would further submit that the petitioner has got five previous cases, thereby, he would vehemently oppose for grant of bail to the petitioner.

5. In reply, learned counsel for the petitioner would submit that the majority of all previous cases are registered under Section 75 of the Tamil Nadu City Police Act



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and as far as the case in Crime No.849 of 2015 registered for the offence under Sections 324 and 506(ii) I.P.C., is concerned, he has been acquitted by the Trial Court.

6. Heard the learned counsel on either side and perused the materials available on record.

7. A perusal of the materials, more particularly the evidence of Mahendra Raja (P.W.2), shows that he and the deceased Basheer called the petitioner and asked him to come to the wine shop and when the petitioner came there, a quarrel arose between them, during such time, Mahendra Raja (P.W.2) and the deceased Basheer pushed the petitioner, due to which he had fallen down and thereafter only, the alleged occurrence had happened. Therefore, taking into consideration the facts and circumstances of the case, we are inclined to suspend the sentence imposed on the petitioner by the Trial Court.

8. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner herein is suspended, subject to the following conditions:

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



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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 stay at Nagapattinam and report before the Inspector of Police, Nagapattinam Town Police Station, Nagapattinam, daily at 10.30 a.m. until further orders.

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

sd/-  
13/06/2024

/ TRUE COPY /

14/06/2024  
Sub-Assistant Registrar  
(C.S.I /II /III /IV )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

KRK  
TO

- 1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.
- 2 THE JUDICIAL MAGISTRATE NO.IV MADURAI.
- 3 DO THROUGH:  
THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.

<https://www.mhc.tn.gov.in/judis>



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4 THE SUPERINTENDENT,CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE  
SOUTH GATE POLICE STATION, MADURAI CITY.

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

COPY TO  
THE INSPECTOR OF POLICE  
NAGAPATTINAM TOWN POLICE STATION, NAGAPATTINAM.

ORDER  
IN  
CRL MP(MD) No.11918 of 2022  
AND  
CRL A(MD)No. 606 of 2022  
Date :13/06/2024

PKP/14.06.2024/ 10P/ 8C  
Madurai Bench of Madras High Court is issuing certified  
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