



CRL MP(MD) No.10382 of 2024

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

Monday, the Second day of December Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE P. VADAMALAI

CRL MP(MD) No.10382 of 2024

IN

CRL RC(MD) No.940 of 2024

M.PREMSINGH

... Petitioner / Petitioner /
Appellant / Accused No. 2

Vs

1 THE STATE OF TAMILNADU
REP. BY THE INSPECTOR OF POLICE,
THUCKALAY POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO. 1239/1992

... Respondent / 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 against the petitioner/appellant/accused No.2 passed in C.A.No. 70/2011 dt 30.07.2024 on the file of the Additional District and Sessions Judge, Padmanabhapuram confirming the judgment passed in S.C.No.146/2003 dt 13.07.2011 on the file of the Assistant Sessions Judge, Padmanabhapuram and enlarge him on bail till the disposal of the revision.

Prayer in CRL RC(MD). 940/ 2024 :

To call for the records relating to the judgment passed in C.A.No. 70/2011 dt 30.07.2024 on the file of the Additional District and Sessions Judge, Padmanabhapuram confirming the judgment passed in S.C.No.146/2003 dt 13.07.2011 on the file of the Assistant Sessions Judge, Padmanabhapuram and set



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aside the same and acquit the Petitioner / appellant / Accused No. 2 from all the charges leveled against him.

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.GOPALAKRISHNA LAKSHMANA RAJU, Advocate for M/s.R.VENKATESWARAN, Advocate for the petitioner and of Mr.M.VAIKKAM KARUNANITHI, Government Advocate (Crl. Side) on behalf of the Respondent, the Court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition to suspend the sentence imposed on the petitioner in C.A.No.70 of 2011, dated 30.07.2024 on the file of the learned Additional District and Sessions Judge, Padmanabhapuram, confirming the judgment passed in S.C.No.146 of 2003 on the file of the learned Assistant Sessions Judge, Padmanabhapuram, dated 13.07.2011 and to release him on bail till the disposal of Criminal Revision Case.

2.The brief facts of the prosecution case:

The petitioner is the Accused No.2 in the case. It was alleged that there was a love relationship between the wife of Accused No.1 and the injured Sivarajan, so on 26.12.1992 at 11.15 p.m., Accused No.1 and the petitioner/Accused No.2 along with other persons went to the defacto complaint's house and indiscriminately attacked him with weapon and caused multiple injuries. On the basis of complaint lodged by the injured, the respondent police registered the F.I.R. in Crime No.1239 of 1992 and did investigation and laid charge sheet. The petitioner along with co-accused were



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of IPC.

charged for the offence under Sections 148, 326, 307, 324 (3 counts) and 307 r/w 149 of IPC.

3. To prove the charge, the prosecution examined 19 witnesses as P.W.1 to P.W.19 and marked 14 exhibits, and also M.Os 1 to 4 were marked. The petitioner/accused has not let in any evidence. After considering both sides evidences and arguments, the Trial Court has found the petitioner/Accused No.2 guilty for the offence under Section 148 of IPC, and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of 3 months and convicted for the offence under Section 326 of IPC, and sentenced him to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of 3 months and convicted for the offence under Section 307 r/w 149 of IPC, and sentenced him to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of 3 months and the sentences were ordered to run concurrently by passing impugned judgment, dated 13.07.2011.

4. Aggrieved by the conviction judgment, the petitioner/Accused No.2 has preferred the Criminal Appeal in C.A.No.70 of 2011 before the District and Sessions Court, Kanniyakumari and the appeal was made over to the Additional District and



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Sessions Court, Padmanabhapuram. On hearing both and perusing the records, the learned Additional District and Sessions Judge, Padmanabhapuram dismissed the appeal and confirmed the conviction and sentence.

5. Being aggrieved by the said judgment, the petitioner has preferred the present Criminal Revision Case. Along with Criminal Revision Case, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the Criminal Revision Case.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records.

7. The learned counsel for the petitioner has submitted that the petitioner herein is arrayed as Accused No.2 in the case. The name of the petitioner is not found in the FIR. The occurrence took place at night by a group of persons, who were said to have attacked the injured Sivarajan. The occurrence took place in the year 2011. There was no identification parade conducted. The injured identified the petitioner after 13 years of occurrence in the Court, which is highly artificial. Moreover, PWs 1 to 5 are the close relatives and interested witnesses. They gave evidence by giving minutes of details about the attacks attributing each and every accused after 13 years, which is also highly artificial and unnatural. P.W.1 stated



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about the injury on the left shoulder, but could not explain about other injuries.

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8. The learned counsel for the petitioner further submitted that there are lot of contradictions in the evidence of prosecution witnesses. P.W.7 deposed that somebody cut the injured. As per F.I.R., there are 15 persons attacked the victim, but the final report was laid only against 7 accused. Further, there are two named persons in the F.I.R., but the prosecution has not shown them either as accused or witnesses. Both the Courts below have not considered all these aspects, but misconstrued the settled propositions of law and convicted the petitioner. The petitioner has a fair chance of succeed in the appeal. The petitioner, who is aged 65 years and is suffering from age-related diseases, has been in prison from 22.08.2024. The petitioner has family and to maintain his family. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

9. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent has contended that both the Courts below correctly appreciated the evidence and properly came to the conclusion that the petitioner was involved in the occurrence and committed the offences as charged. The evidence of P.W.1 to P.W.4 and medical officer - P.W.14, who found 18 injuries all over the body of the victim, corroborated each other with regard to injuries sustained by the victim. After conviction, the petitioner is in judicial custody only from 22.08.2024. The gravity of



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the offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence.

10. On hearing both side rival arguments and perusal of records, it is clear that the petitioner herein is arrayed as Accused No.2. The petitioner's main contention is that the occurrence took place at night without sufficient lights. The petitioner further contends that his name was not found in the FIR, but he was falsely implicated in this case due to motive. He would further contend that there are contradictions in the evidence of prosecution witnesses and also stated that PWs.1 to 4 gave details of attacks attributing to each accused after a lapse of 13 years. However, these are to be decided while deciding the appeal on merits.

11. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case. The fact remains that there are arguable points involved in this criminal revision as stated supra and further the criminal revision which is filed in 2024, would not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison from 22.08.2024. The learned counsel for the petitioner says that the petitioner is aged 65 years and suffering from age-related diseases. In the above circumstances, 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.



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12. Accordingly, the relief of suspension of sentence is granted to the petitioner on the following conditions:-

(i) 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, Padmanabhapuram;

(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

(iii) The petitioner shall appear before the Assistant Sessions Court, Padmanabhapuram on all first working day of every week at 10.30 a.m., until further orders.

sd/-
02/12/2024

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03/12/2024
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD



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- To
- 1.The Additional District and Sessions Judge,
Padmanabhapuram.
 - 2.The Assistant Sessions Judge,
Padmanabhapuram.
 - 3.The Judicial Magistrate,
Padmanabhapuram.
 - 4.Do through the Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.
 - 5.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
 - 6.The Superintendent,
Central Prison, Palayamkottai.
 - 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.VENKATESWARAN, Advocate (SR-14861[I] dated 03/12/2024)

ORDER
IN
CRL MP(MD) No.10382 of 2024
IN
CRL RC(MD) No.940 of 2024
Date :02/12/2024



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ED/  /SAR- (03/12/2024) 9P / 9C

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