



CRL MP(MD) No.16315 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Thursday, the Fourth day of January Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.16315 of 2023
in
CRL A(MD)No.1014 of 2023

MUTHUKUMAR @ PERIYATHAMBI

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
KARAIKUDI NORTH POLICE STATION,
SIVAGANGAI DISTRICT.
(CRIME NO.5/2015)

... 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 of Imprisonment imposed in SC No.167/2016 on the file of the Learned Principal District and Sessions Judge Court, Sivagangai vide Judgment dt.23/6/2022 and enlarge the Petitioner/Appellant on bail, pending disposal of the above said Criminal Appeal.

PRAYER in CRL A(MD)No.1014 of 2023:

To call for the records pertaining to the judgment in S.C.No.167 of 2016 the file of the Learned Principal District and Sessions Judge Court, Sivagangai vide Judgment dated 23.06.2022 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.S.PRABHA, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-



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Reserved on : 21.11.2023
Pronounced on : 04.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him and release him on bail pending disposal of the Criminal Appeal against the judgment of the Principal Sessions Court, Sivagangai in S.C.No.167 of 2016 dated 23.06.2022.

2.The brief facts of the prosecution case:

The petitioner/accused and the deceased Madasamy were working in Nagalakshmi wood workshop belonged to one Veerappan, which was situated at Anandha Nagar, Karaikudi new town. Both the petitioner/accused and the deceased used to stay at the said mill and on 03.01.2015 at 23.00 hours there was a wordy altercation between them in hearing songs through FM radio and the petitioner/accused attacked with wooden long on the head of the deceased, who was admitted in Govt.Rajaji Hospital and died on 04.01.2015 at 18.00 hours. The son of deceased/PW1 lodged a complaint before the Karaikudi North Police Station. FIR was registered in Crime No.05 of 2015 for the offence under Section 302 of IPC against the petitioner. P.W.12 - Inspector of Police did investigation and laid charge sheet against the petitioner for the offence under Section 302 of IPC. The petitioner was charged by the trial Court for the offence under Section 302 of IPC.



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3. To prove the charge, the prosecution examined 12 witnesses as P.W.1 to P.W.12 and marked 13 exhibits as Ex.P1 to Ex.P12. M.Os.1 to 3 were marked. On the defence side, no witness was examined and no exhibit was marked. After considering both side evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 304 (1) of IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of 8 years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of 2 months by passing impugned judgment dated 23.06.2022.

4. Aggrieved by the conviction judgment, the petitioner/accused 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 pending disposal of the appeal.

5. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

6. The learned counsel for the petitioner has submitted that there is no eye witness in this case, P.W.2/ the owner of the wooden work shop, clearly deposed that there was no enmity between the petitioner/accused and the deceased, P.W.3 has not seen the occurrence and the injury sustained by the deceased was previous



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one and there is no medical evidence to prove that the injury sustained only by wooden log. P.W.2 deposed that the petitioner/accused was also sustained injury. The wife of deceased was examined as P.W.4 who clearly deposed that she came to know that her husband sustained head injury by falling down. The postmortem doctor/P.W.9 deposed that there is no possibility of sustaining 6 abrasion injuries by single attack with M.O.1 /wooden log. Thereby the prosecution failed to establish its case. The Trial Court has not considered these evidences. The petitioner is aged person and is in prison from 23.06.2022 nearly 1 ½ year and he has not committed any offence as alleged. The petitioner has a fair chance of success in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. In support of his argument he relied on the judgment of the **Neutral Citation No.2023 : AHC: 156221- DB (Govt. Appeal No.1873 of 1984 dt 07.08.2023).**

7. Per contra, the learned Additional Public Prosecutor would submit that it is admitted fact that the petitioner/accused and the deceased were working in the same wooden workshop and there was a wordy altercation between them and thereby the petitioner/accused attacked the deceased with wooden log. Of course, the post-mortem doctor deposed in his cross examination that there is no possibility of 6 abrasions by single blow with a wooden log. But, the petitioner/accused states



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that the deceased had also previous injuries. Moreover, the petitioner/accused also sustained injury as stated by him. The petitioner/accused was at occurrence place is proved by the prosecution witnesses. The Trial Court has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. Therefore, he strongly 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. The petitioner stated that he has not committed any offence. Only he took defence that the deceased fell down himself and sustained injuries as the medical evidence is that there is no possibility of six injuries by single attack with wooden log. The fact remains that the petitioner also sustained injury at the time of occurrence as per P.W.2 owner's evidence. However, these are to be decided while deciding the appeal on merits. At the same time, the learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2022 and the same is not likely to be taken up for final hearing in the near future. The petitioner is in prison for more than 1 ½ year against the conviction of 8 years. In the above circumstances and also considering the



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incarceration period of petitioner, 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.

9. 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 is directed to be enlarged on bail on his executing 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 No.II, Dindigul;

(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/Accused shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-

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

VSD



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TO செய்து அளித்தல்

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- 1 THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, SIVAGANGAI.
- 2 THE JUDICIAL MAGISTRATE NO.II
DINDIGUL.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
DINDIGUL.
- 4 THE INSPECTOR OF POLICE
KARAIKUDI NORTH POLICE STATION, SIVAGANGAI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.16315 of 2023
in
CRL A(MD)No.1014 of 2023
Date :04/01/2024

SS/SAR- /04/01/2024/7P/7C

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