



CRL MP(MD) No.16999 of 2023

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

Monday, the First day of April Two Thousand and Twenty Four

PRESENT

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

CRL MP(MD) No.16999 of 2023
in
CRL A(MD)No. 1064 of 2023

MANIMARAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ATHANAKOTTAI POLICE STATION,
PUDUKOTTAI DISTRICT.
(CRIME NO.70/2018).

... 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 against the petitioner in SC No.7/2019 dt.17/10/2022 on the file of the Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai and enlarge the petitioner on bail pending disposal of the above criminal appeal.

PRAYER IN CRL A(MD)No. 1064 of 2023:

To call for the records relating to the judgment in S.C.No. 7/2019 dated 17.10.2022 on the file of the Additional District and Sessions Judge/ presiding Officer, Special Court for EC and NDPS Act Cases, Pudukottai set aside the same and allow this Criminal appeal.

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CRL MP(MD) No.16999 of 2023

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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 MR.MAHESWARAN.R, Advocate for the petitioner and of MR.RMS.SETHURAMAN, 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) Victim Arun was having a Kabadi Team in the name of “Thalapathi Boys”. Parthipan (A1) and Manimaran / petitioner herein (A2), who is the nephew of A1 were also members of the said Kabadi Team. Since the accused were always under intoxication, the victim Arun had kept them as substitute players, thereby both the accused nurtured grudge against the victim for not having them to play as the main players in the said Kabadi Team. Prior to fifteen days of the occurrence, the accused had threatened the de facto complainant (P.W.1), father of the victim saying that the victim was not allowing them to play and by keeping them as substitute players, they were degraded and that if they were not allowed to play in the said Kabadi Team, they would kill his son.

(ii) While so, on 17.09.2018, while the victim was Arun was going for a walk near the house of Parthiban (A1), after having dinner, Parthiban (A1) had assaulted

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CRL MP(MD) No.16999 of 2023

the victim with Sickle (M.O.3) resulting him in sustaining injury and falling down and after the victim fallen down, Manimaran (A2) had stamped on the victim's chest. When the de facto complainant (P.W.1) and other witnesses raised alarm, the accused ran towards eucalyptus forest area and escaped from the scene of occurrence.

(iii) Arjun (P.W.4) and Prabakaran (P.W.5), elder brother's son of P.W.1, taken the victim in a two wheeler to the Government Hospital, Pudukottai. While the victim was taking treatment, he died at the hospital on 18.09.2018 at 05.00 a.m. Thereafter, P.W.1 went to the respondent - Police Station at 07.45 hours and gave a complaint (Ex.P1). Pursuant to the said complaint (Ex.P1), a case in Crime No.70 of 2018 (Ex.P8) came to be registered on the next day i.e.18.09.2018 at 07.45 hours.

(iv) Thereafter, P.W.17 took up the investigation and examined the witnesses and handed over the file to P.W.18, who had filed the final report in P.R.C.No.23 of 2018, before the learned Judicial Magistrate No.I, Pudukkottai, under Sections 120(b), 294(b) and 302 I.P.C., against the accused.

(v) 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



CRL MP(MD) No.16999 of 2023

Session, Pudukkottai, in S.C.No.7 of 2019 and was made over to the Additional District and Sessions Court, Special Court for EC and NDPS Act Cases, Pudukkottai, for trial.

(vi) The Trial Court, after hearing the accused, framed three charges against them, as detailed below:

Charge	Penal Provisions
1.	120(b) r/w 302 I.P.C.
2.	294(b) I.P.C.
3.	302 I.P.C.

(vii) When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 18 witnesses and marked 17 exhibits and 05 material objects. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they 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.

(viii) By judgment and order dated 17.10.2022, the Trial Court found the accused not guilty for the offence under Section 294(b) I.P.C., and acquitted them from the said charge, however, found them guilty for the offence under Sections 120 (b) r/w 302 I.P.C., and 302 I.P.C., and convicted and sentenced them, as detailed

below:

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CRL MP(MD) No.16999 of 2023

Section of Law	Sentence of imprisonment	Fine amount
120(b) r/w 302 I.P.C.	To undergo life imprisonment.	Rs.2,000/- each in default to undergo one month simple imprisonment.
302 I.P.C.	To undergo life imprisonment.	Rs.2,000/- each in default to undergo one month simple imprisonment.

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

2. Challenging the said conviction and sentence, the Manimaran (A2) has filed an appeal in CrI.A.(MD) No.1064 of 2023 and pending the appeal, he has filed the above miscellaneous petition seeking to suspend the sentence imposed on him.

3. Mr.R.Maheswaran, learned counsel for the petitioner would submit that the Trial Court failed to take into consideration the long delay in registration of FIR and also the unexplained delay in the FIR reaching the jurisdictional Magistrate Court, thereby creating a doubt with regard to possibility of the petitioner (A2) being falsely implicated in this case after deliberation. Admittedly, P.W.1, P.W.4 and P.W.5, who are close relatives, are stated to be eyewitnesses to the occurrence and P.W.4 and P.W.5 are the persons, who have admitted the victim in the hospital on the same day at 23.00 hours. As per the Accident Register (Ex.P7), only one person is said to have

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



CRL MP(MD) No.16999 of 2023

inflicted injury on the victim. It is their further evidence that within 10 Minutes of them reaching the hospital along with the victim, intimation was given to the Police Station and a statement was also recorded from P.W.1. However, suppressing such statement, a complaint (Ex.P1) had been given to the Police on the next day morning and the FIR (Ex.P8) came to be registered at 07.45 hours. Strangely, though the distance between the Police Station and the jurisdictional Magistrate Court is only 25 Kms., and it is the admission of P.W.12 that there is a possibility of reaching the Court within 45 Minutes, the FIR (Ex.P8) had been received by the jurisdictional Magistrate Court on 18.09.2018 at 05.55 p.m. The delay in the FIR (Ex.P8) reaching the jurisdictional Magistrate Court has not been duly explained by the prosecution, which creates a doubt in the prosecution case.

4. Learned counsel for the petitioner would further submit that even as per the prosecution version, the overt act attributed to the petitioner (A2) is that he is said to have stamped on the Chest of the victim, after the victim is said to have fallen down and the injury is not a fatal injury. Further, there are several arguable points in favour of the petitioner (A2) and that since A1 has not preferred any till date, the likelihood of the appeal being taken up for final hearing in the near future is also not possible and therefore, he prayed for suspension of sentence.



CRL MP(MD) No.16999 of 2023

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5. Mr.RMS.Sethuraman, learned Additional Public Prosecutor, would submit that the petitioner is A2 in this case. On account of previous enmity, the petitioner (A2) conspired with A1 in order to do away the victim and that on 17.09.2018, when the victim had gone for a walk near his house around 11.00 p.m., the accused have waylaid him and A1 had inflicted injuries with Sickle (M.O.5) and after the victim had fallen down, the petitioner (A2) had stamped on his chest and caused injuries. The victim was taken to the hospital, where he succumbed to the injuries on the next day. The delay in the FIR (Ex.P8) reaching the jurisdictional Magistrate Court had been explained and the Trial Court had rightly found the accused guilty for the offences. There are eyewitnesses to the occurrence, who have also spoken about the incident and the overt act of the petitioner (A2) and hence, he would vehemently oppose for grant of bail to the petitioner (A2).

6. Heard the learned counsel on either side and carefully perused the materials available on record, including the statements of the witnesses and copy of Accident Register (Ex.P7) and First Information Report (Ex.P8).

7. Accident Register (Ex.P7) is the document, which has come into existence immediately after the occurrence. As per Ex.P7, the victim is said to have been

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CRL MP(MD) No.16999 of 2023

assaulted by a known person nearby his home around 11.00 p.m., on 17.09.2018 by using a Sickle (M.O.5). The victim had been admitted in the hospital at 11.35 p.m. The statement was recorded from P.W.1 within half an hour of the occurrence and a signature was also obtained from him at the hospital. However, as per the prosecution, the complaint (Ex.P1) is said to have been given on the next day morning at 07.45 a.m., and the FIR (Ex.P8) has reached the jurisdictional Magistrate Court only at 05.55 p.m., though the distance between the Police Station and the jurisdictional Magistrate Court is only 25 Kms. The delay in the FIR (Ex.P8) reaching the jurisdictional Magistrate Court has not been properly explained by the prosecution. These aspects create a doubt in the prosecution case. Hence, we are inclined to grant bail to the petitioner (A2).

8. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner herein (A2) is suspended, subject to the following conditions:

- i. The petitioner (A2) 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 Additional District Judge and



CRL MP(MD) No.16999 of 2023

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Sessions Judge, Special Court for EC and NDPS Act Cases, Pudukottai.

- 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 (A2) shall stay at Salem and report before the Inspector of Police, Fair Land Police Station, Salem, daily at 10.30 a.m. until further orders.
- iv. It is made clear that the petitioner (A2) shall not enter into the jurisdictional limits of the respondent Police Station until further orders.

sd/-

01/04/2024

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01/04/2024

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

KRK

TO

- 1 THE ADDITIONAL DISTRICT
AND SESSIONS JUDGE/PRSIDING OFFICER,
SPECIAL COURT FOR EC AND NDPS ACT CASES, PUDUKKOTTAI
- 2 THE INSPECTOR OF POLICE
ATHANAKOTTAI POLICE STATION, PUDUKOTTAI DISTRICT.



CRL MP(MD) No.16999 of 2023

3 THE SUPERINTENDENT,CENTRAL PRISON, TRICHY .

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

COPY TO
THE INSPECTOR OF POLICE,
FAIR LAND POLICE STATION, SALEM.

+1 CC to M/s.R.MAHESWARAN, Advocate (SR-4024[I] dated 01/04/2024)

ORDER
IN
CRL MP(MD) No.16999 of 2023
in
CRL A(MD)No. 1064 of 2023
Date :01/04/2024

PKP/01.04.2024/ 10P/ 7C

Madurai Bench of Madras High Court is issuing certified
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