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*Crl.M.P.No.17597 of 2023
in Crl.A.No.1248 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.17597 of 2023
in Crl.A.No.1248 of 2023

1.Kaleeshwaran

2.Anan @ Anandhakumar

... Petitioners

Vs.

The State rep. By
The Inspector of Police,
Tiruppur Central Police Station,
Tiruppur.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed imposed by the order passed against the petitioners in S.C.No.29 of 2023 on 07.10.2023 by the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruppur and enlarge the petitioners on bail pending disposal of the above appeal.

For Petitioners : Mr.P.Thinesh

For Respondent : Mr.C.E.Pratap
Government Advocate [Crl. Side]

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioners, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruppur by judgment dated 07.10.2023 made in S.C.No.29 of 2023 and enlarge the petitioners on bail pending disposal of the above appeal.

2.The petitioners/A3 and A4 were convicted by the Trial Court in S.C.No.29 of 2023 and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo one year rigorous imprisonment for the offences under Sections 452 IPC and to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo one year rigorous imprisonment for the offence under Sections 393 r/w. 398 IPC. Both the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.



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3.The case against the accused is that the defacto complainant was running a massage centre in the name of Five Star Ayurvedic Wellness centre for the past seven years, in which, Senthamarai Selvi/P.W.2, Mythili/P.W.3, Sandhya and Vasanthi were employed. On 01.12.2022 at about 5.30 p.m., A1/Syed Mohamed Ikram @ Ikram, A2/Karthick and the petitioners/A3 and A4 came to the massage centre in a Maruthi Swift car bearing registration No.TN 04 AC 5890 and demanded money for having liquor. A1 threatened the staff, enquired them as to how many rooms are there in the massage centre and claimed that they were well known rowdies. A2 gave a knife to A1, who placed it on the neck of P.W.2 and asked her to call the owner of the massage centre. A1 had also used abusive words against the female staff working in the massage centre and used force against them. P.W.1, who is the owner of the massage centre, came there and explained them that he does not have money. The accused persons threatened him by showing the knife and thereafter, left the massage centre. On the next day, P.W.1 lodged a complaint and a case in Crime No.485 of 2022 was registered. P.W.5 visited the scene of occurrence, prepared observation mahazar/Ex.P4 and rough sketch/Ex.P7 in the presence of



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P.W.3. Thereafter, P.W.6/Investigating Officer took up the investigation, examined the witnesses, collected documents and arrested the accused and based on the confession, M.O.1 and M.O.2 were seized. On completion of investigation, charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.6 were examined, Ex.P1 to Ex.P11, M.O.1 and M.O.2 marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court convicted the petitioners as stated above.

5.The contention of the learned counsel for the petitioners is that in this case, complaint was given with a delay and no explanation was given for the same. He would submit that P.W.1 though states that he is running a massage centre but he has not produced any documents, that he had valid licence and permission to run a massage centre. Further, though P.W.2 and P.W.3 would state that they were hit with M.O.1/knife and kicked by the accused persons but they had not visited any Doctor for treatment and no



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medical records produced. He would further submit that though two more persons, namely, Sandhya and Vasanthi were said to have been present in the scene of occurrence along with P.W.2 and P.W.3, they were not examined as witnesses. He further submitted that admittedly, the witnesses and the accused are strangers and hence, the identification of the accused is highly doubtful. There is no description or any particulars given about the accused in the complaint. Further, the prosecution produced a CD/Ex.P2 containing the CCTV recordings but the CD was not viewed in the Court and the recordings in the CD are admitted to be blurred. Though the Trial Court records that the recordings in the CD are not clear but relied upon the same, convicted the petitioners which is not proper. Further, Ex.P3/65B certificate was not given by the person who downloaded the CD recordings. The CCTV recordings were downloaded in a pendrive and thereafter, from pendrive it was copied to CD/Ex.P2. In view of the same, Ex.P2 and Ex.P3 are inadmissible. The evidence of P.W.2 and P.W.3 are contradictory to each other. P.W.2 and P.W.3 are the employees of P.W.1, P.W.4 is the brother of P.W.1 and no private witnesses examined. These factors have not been considered by the Trial Court. Hence, prayed for suspension of



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6.The learned Government Advocate [Crl. Side] filed a counter and submitted that on the complaint of P.W.1, a case was registered on 02.12.2022 in Crime No.485/2022 for the offence under Section 397 iPC. On 01.12.2022 the petitioners along with two others came to the massage centre of P.W.1, threatened the inmates, namely, P.W.2, P.W.3 and two others by showing knife. P.W.1 was called and he was also threatened and demanded money. Thereafter, the accused persons hit P.W.2 and P.W.3 by using the backend of the knife and also kicked them. He would submit that since P.W.2 and P.W.3 are women, it took sometime for them to reconcile to the situation and hence, on the next day P/W/1 lodged a complaint. He would further submit that near the massage centre there was a CCTV camera, from which CCTV recordings in CD/Ex.P2 was produced. P.W.1 to P.W.3 identified the petitioners and other accused during the trial and the CCTV recordings confirms the overt act of the petitioners and other accused in commission of the offence. He further submitted that the occurrence is said to have taken place inside the massage centre and hence, availability of



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public witness cannot be insisted, the inmates of the massage centre clearly stated about the occurrence. Hence, prays for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that in this case, complaint was lodged with a delay, no reason for the delay given. In this case the accused are strangers not in dispute, in the complaint, there is no specific identification given about the accused. The identification of the accused in this case is highly doubtful. The recordings in Ex.P2/CD is found to be blurred, by the Trial Court. Further, P.W.2 and P.W.3 are the employees and P.W.4/brother of P.W.1, no independent witnesses examined. Added to it, the first petitioner has no previous case and the second petitioner has one previous case which is of the year 2019 and they were not known persons with any serious criminal records. There are arguable points in the appeal. It is seen sometime will be taken for hearing the appeal. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8.Accordingly, the Substantive Sentence of Imprisonment imposed on



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the petitioners is suspended till the disposal of the appeal and the petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Tiruppur

9.Further, the petitioners shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the appeal and if they were is not able to appear before the Trial Court on that day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of their absence as directed by the Trial Court.

10.Accordingly, this Miscellaneous Petition is ordered.

29.01.2024

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Note: Issue order copy on 30.01.2024



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To

- 1.The Inspector of Police,
Tiruppur Central Police Station,
Tiruppur.
- 2.The Sessions Judge,
Magalir Neethimandram
[Fast Track Mahila Court],
Tiruppur.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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