



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.1485 of 2022
in Crl.A.No.117 of 2022

1.S.T.Saminathan
2.K.Manivel

...

Petitioners /
A-2 & A-4

versus

State Rep. by,
Inspector of Police,
Economic Offences Wing-II,
Coimbatore.
(Crime No.1 of 2015)

...

Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (ii) of Cr.P.C., praying to suspend the sentence imposed by the judgment dated 28.12.2021 in C.C.No.1 of 2016 on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore and enlarge the petitioners on bail, pending disposal of the above Criminal Appeal.

For Petitioners : Mr.S.Shankar

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been preferred by the petitioners / accused 2 and 4, seeking to suspend the sentence imposed upon them, by judgment dated 28.12.2021 passed in C.C.No.1 of 2016 on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore, and to enlarge them on bail, pending disposal of the appeal.

2. The petitioners, who are the accused nos.2 and 4 in C.C.No.1 of 2016 on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore, were convicted of the offences under Section 420 of IPC and Section 5 of TNPID Act, 1997 and sentenced as follows:



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Offence	Sentence
Section 420 of IPC	Rigorous Imprisonment for 7 years along with fine of Rs.4,00,000/-, in default, to undergo further Rigorous Imprisonment for one and half years
Section 5 of TNPID Act	Rigorous Imprisonment for 7 years along with fine of Rs.4,00,000/-, in default, to undergo further Rigorous Imprisonment for 2 years
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the above conviction and sentence, the petitioners/A-2 & A-4, have filed Crl.A.No.117 of 2022 along with the instant Miscellaneous Petition, seeking suspension of sentence and bail.

4. Heard Mr.S.Shankar, learned counsel for the petitioners/A-2 & A-4 and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The case of the prosecution is that the petitioners and 4 others were running a registered financial establishment in the name of A-1 Kubera Auto Finance and collected deposits from the public during the period between 2008 to 2010 and paid interest promptly. During the relevant point of time, only the third accused viz. Muthuvel had signed and issued deposit receipts to the depositors but he failed to return the deposit amount of Rs.12,66,000/- to 20 depositors. Therefore, the accused nos.1 to 7 are liable to be convicted under Section 420 of IPC and Section 5 of TNPID Act 1997.

6. The learned counsel for the petitioners would submit that the evidence let in by the prosecution witnesses will categorically proved that A-3 alone collected the deposits and due to the reason that the petitioners are the partners in A-1 firm, they are arrayed as accused. The evidence given by the prosecution witnesses are having material contradictions in respect to the role played by the petitioners. In the impugned judgment, the learned Special Judge, Special Court under TNPID Act, Coimbatore, has also observed that, A-3 collected the deposits from the public. Further, the petitioners are in incarceration from 28.12.2021 onwards and they are the sole bread winner of their families. The petitioners are intended to settle the issue by paying the deposits made by the depositors and therefore, if the petitioners are in judicial custody, they could not mobilise any funds and settle the issue. Now, the petitioners are willing to deposit a portion of their liability. Hence, he prayed to allow this petition seeking suspension of sentence to the petitioners/A-2 & A-4.



7. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent/State raised serious objection for allowing this petition. Further, he would contend that there was no material contradiction found available in the evidence given by the prosecution witnesses. According to him, this petition requires to be dismissed.

8. Submissions made by the learned counsel appearing on either side are considered. In the impugned judgment, there was a clear observation that the other accused, who is arrayed as A-3 alone collected the deposits and issued deposit receipts to the customers. However, being the reason that the petitioners are the partners in A-1 firm, under TNPID Act, they are also liable to pay the matured deposit amount. In this regard, the petitioners wanted to settle the issue and now, they offered to deposit a portion of their total liability. It is true if the petitioners are in prison, it could not be possible to settle the issue by paying the deposit amount after mobilizing sufficient funds.

9. Thus, considering the above facts, especially, on considering the bona fide intention having by the petitioners as aforesaid and also the appeal is not likely to be taken up in the near future, this Court is of the view that the petitioners/A-2 & A-4 are entitled to the relief of suspension of sentence and bail.

10. Accordingly, sentence of imprisonment alone is suspended and bail is granted to the petitioners on the following conditions:

(a) The petitioners are directed to deposit Rs.2,50,000/- [Rupees Two Lakhs Fifty Thousand only] each to the credit of C.C.No.1 of 2016 before the trial Court, within a period of two weeks from the date of receipt of a copy of this order and on such deposit being made, the trial Court shall redeposit the said amount in a fixed deposit account in any nationalized bank, so that the amount accrues interest. The disbursal of this amount shall be decided at the culmination of the criminal appeal. Thereafter, the petitioners are ordered to be released on bail on each of them 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 Special Judge, Special Court under TNPID Act, Coimbatore;

(b) The petitioners/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities; and



(c) The petitioners shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal and if they are not able to appear before the trial Court on any 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 his absence, as directed by the trial Court.

11. With the above directions, this Criminal Miscellaneous Petition is ordered.

-sd/-

21/03/2022

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE,
SPECIAL COURT UNDER TNPID ACT, COIMBATORE.

2 THE INSPECTOR OF POLICE,
ECONOMIC OFFENCE WING-II,
COIMBATORE

3 THE SUPERINTENDENT,
OF PRISON, CENTRAL PRISON, COIMBATORE

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 C.C. to M/S S.SHANKAR Advocate on payment of necessary charges
SR.NOS.4214 & 4261

Order
in
CRL MP.1485/2022
in
CRL A.117/2022

Date :21/03/2022

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JPA 22/03/2022