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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.1606 of 2022

in

Crl.A.No.121 of 2022

1.Prabhu	... 1 st Petitioner/Accused-2
2.Eswaran	... 2 nd Petitioner/Accused-3
3.Prabhakaran	... 3 rd Petitioner/Accused-4

Vs.

The State rep. by
The Inspector of Police,
Tiruppur (North Police Station),
Tiruppur.

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (2) of Cr.P.C to suspend the sentence imposed by an order in S.C.No.73 of 2017 dated 21.01.2022 on the file of I Additional District and Sessions Judge, Tiruppur and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

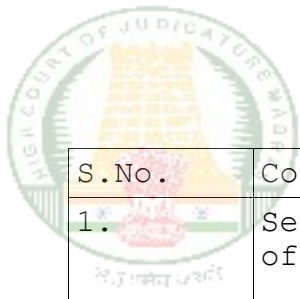
For Petitioners : Mr.L.Infant Dinesh

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

O R D E R

This Criminal Miscellaneous Petition has been filed by the petitioners/accused 2 to 4, seeking suspension of sentence of imprisonment imposed by the learned I Additional District and Sessions Judge, Tiruppur by the judgment dated 21.01.2022 in S.C.No.73 of 2017 and enlarge the petitioners/appellants on bail pending disposal of the above Criminal Appeal.

2. The petitioners/appellants herein is the accused in Sessions Case No.73 of 2017 on the file of the I Additional District and Sessions Court, Tiruppur. They were found guilty for the offences punishable under Section 363 r/w. 34 I.P.C. and they have been convicted and sentenced as under:



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S.No.	Conviction	Sentence
1.	Section 363 r/w. 34 of I.P.C.	7 years Rigorous Imprisonment each and fine of Rs.5,000/- each in default to undergo 6 months Simple Imprisonment each.

3. Challenging the above conviction and sentence, the petitioners/accused 2 to 4 have filed Crl.A.No.121 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The case of the prosecution is that on 28.07.2016 at about 9.00 a.m. the 1st accused in connivance with the 2nd accused Prabhu, who was working at the hospital run by P.W.1/defacto complainant and the accused 3 and 4 with a motive to extort money from the defacto complainant, kidnapped the son of defacto complainant from the campus of A.K.R. School, Tiruppur. Hence, a case was registered against the petitioners/accused 2 to 4 and other accused for the offence punishable under Section 363 r/w. 34 of I.P.C.

5. Learned counsel appearing for the petitioners would submit that before the trial Court, the defacto complainant himself did not say anything about the petitioners 2 and 3/Accused 3 and 4. Without considering the same the learned trial Judge had convicted the petitioners for the offences punishable under Section 363 r/w. 34 of I.P.C. According to him, there was no nexus between the petitioners and the crime. Learned counsel would further submit that there are arguable points available in the Criminal Appeal and the petitioners/accused have got a fair chance of succeeding in the Criminal Appeal and hence, the substantive sentence imposed against the Petitioners/Accused may be suspended and the petitioners may be enlarged on bail pending disposal of the above Criminal Appeal.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent police vehemently opposed stating that the petitioners are involved in the alleged occurrence. However, he admits that in the evidence given by the defacto complainant, nothing was stated against the petitioners 2 and 3. Further, he would contend that the evidences recorded from the prosecution witnesses would prove the case of the prosecution beyond reasonable doubt. According to him, interference of this Court is not necessary in the findings arrived at by the trial Court.

7. Heard the learned counsels appearing on either side and also perused the materials placed on record.

8. The submissions made by the learned counsel appearing on either side are considered. The evidence given by the prosecution witness are placed before this Court for perusal. In the complaint as well as the evidence given by P.W.1, there was an allegation against



the first petitioner/Accused-2 and Accused-1 and not against the petitioners 2 and 3/Accused 3 and 4. Further, the evidence in respect of Section 34 of I.P.C. needs detailed appraisal. Since, there was no allegation against the petitioners 2 and 3 by the defacto complainant, the evidence given by him also needs detailed appraisal along with the other documents relied on by the prosecution.

9. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioners, this Court is of the view that the substantive sentence of imprisonment cannot be suspended for the first petitioner. Accordingly, the relief of suspension of sentence as against the first petitioner/Accused-2 is dismissed. In respect of the petitioners 2 and 3/Accused 3 and 4, the reliefs of suspension of sentence and bail is granted till the disposal of the Criminal Appeal on the following conditions:

(a) The petitioners 2 and 3 are ordered to be released on bail, on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, with two sureties each for a like sum to the satisfaction of the learned I Additional District and Sessions Judge, Tiruppur.

(b) The petitioners 2 and 3 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.

(c) The petitioners 2 and 3 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 their absence, as directed by the trial Court.

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

-sd/-

07/03/2022

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.



1 I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TIRUPPUR

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 INSPECTOR OF POLICE,
TIRUPPUR NORTH POLICE STATION,
TIRUPPUR

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.L.INFANT DINESH Advocate on payment of necessary
charges SR.NO.3485

Order
in
Crl.M.P.No.1606 of 2022

in
Crl.A.No.121 of 2022

Date :07/03/2022

From 7.2.2001 the Registry is issuing certified
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RVR 08/03/2022