



CRL.M.P. (MD) No.14128 of 2022
in
CRL.RC. (MD) No.33 of 2021

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G.ILANGO VAN, J.

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in C.A No.44 of 2018 in Crime No.1 of 2008 dated 05/07/2019 on the file of the Principal Sessions Judge, Thoothukudi, confirming the judgment passed by the District Munsif-cum-Judicial Magistrate, Vilathikulam, in CC No.171 of 2009, dated 21/06/2018 and enlarge the petitioners on bail pending disposal of the criminal appeal.

2.The facts in brief:-

On 29/06/2008 at about 04.00 am, when the de-facto complainant namely the respondent along with his team were on the routine petrol duty, the accused persons were found in possession of Polythene Sack bag, which contains one peacock and 7 peahens. Finding that those were scheduled birds, a case was registered and further proceedings were undertaken and they were charged under sections 9, 39(3), 44, 49(a) (a1), 51(1) of the Wild Life (Protection) Act.



3.Before the trial court, on the side of the prosecution, 5 witnesses were examined and 6 documents were marked, apart from 5 material objects.

4.At the conclusion of the trial, the trial court found that the charges against the accused were proved beyond all reasonable doubt and accordingly, convicted and sentenced them to undergo 3 years simple imprisonment each and also imposed a fine of Rs.10,000/-, each and in default to undergo 6 months imprisonment for the offences 9, 39(3), 44, 49(a) (a1), 51(1) of the Wild Life (Protection) Act.

5.Against the above said conviction and sentence, appeal was preferred before the Principal Sessions Judge, Thoothukudi, in CrI.A No.44 of 2018, which was also dismissed, confirming the conviction and sentence passed by the trial court. Against which, this revision has been preferred. Pending revision, this criminal miscellaneous petition has been filed seeking suspension of sentence.

6.The petitioners were directed to surrender before the trial court for considering the petition for suspension of sentence. In pursuance of the order, they have also surrendered before the trial court and CrI.MP Nos.470 and 471 of 2021 were moved before this court seeking in order to suspend the surrender before the trial court. But that



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was dismissed by this court, on 02/03/2021 with a direction to the revision petitioners to surrender before the trial court. That was also not complied. Later, they filed CrI.MP(MD)No.7077 of 2021 to modify the above said condition and that was also dismissed. Now finally, they have surrendered before the trial court and inform the same to this court.

7.The learned counsel appearing for the petitioners would submit that the presence of the Investigating Officer in the place of occurrence is highly doubtful; No recovery mahazar was prepared on the spot and no injury was also found on the body of the peacock and the Police Officer, who arrested the accused, registered the FIR has become the Investigating Officer, which is not permissible under law.

8.But the learned Additional Public Prosecutor would submit that the injuries were found on the body of the peacock and peahens. Even the postmortem report confirmed to the effect that the injuries would have been suffered by the birds, some three days prior to the occurrence. So he has submitted that that there is no infirmity in the prosecution case.



9. Whether the above said points are available for the petitioners or not is a matter for consideration in the main appeal.

10. But however, considering the period incarceration and also considering the fact no other bad antecedent has been reported against the petitioners and no similar case is filed against the petitioners, I am inclined to enlarge the petitioners on bail, by suspending the substantive part of sentence. Accordingly, the suspension of sentence petition is **allowed** and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) the petitioners are directed to be enlarged on bail on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the District Munsif-Judicial Magistrate Court, Vilathikulam; and

(ii) on further condition that the petitioner shall appear before the said



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Court once in a week i.e., on the first
working day of every week at 10.30 am
pending appeal.

23.11.2022

Index : Yes/No
Internet : Yes/No
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Copy to:-

The Additional Superintendent of Prison,
Central Prison,
Palayankottai.



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