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CrI.MP.No.3229 of 2024
in CrI.A.No.213 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.MP.No.3229 of 2024
in CrI.A.No.213 of 2024

1.Vinothkumar
2.Saranu
3.Rama Chandrappa

...Petitioners/Accused Nos.4 to 6

Vs.

The Inspector of Police
Karumalaikoodal Police Station
Salem District
Crime No.217 of 2016

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence awarded in the judgment dated 07.10.2023 passed by the Court of the Sessions Judge, Magalir Neethimandram (Mahila Court), Salem in S.C.No.60 of 2018 and enlarge the petitioners on Bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.N.K.Ponraj
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr. C. Aravind

ORDER



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(Order of the Court was delivered by SUNDER MOHAN, J.)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners, by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.60 of 2018, by the judgment dated 07.10.2023, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Mahila Court, Salem, in S.C.No.60 of 2018, convicted and sentenced the petitioners herein as follows:

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A4, A5 & A6	120 (B) IPC	To undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo three months Simple imprisonment.
	342 IPC	To undergo six months Simple Imprisonment.
	396 IPC	To undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six months Simple imprisonment.
	302 IPC	To undergo Rigorous Imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to undergo six months Simple imprisonment.
	450 IPC	To undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo six months Simple



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<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
		imprisonment.

3.Challenging the above conviction and sentence, the petitioners/A4 to A6, have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.N.K.Ponraj, learned Counsel appearing for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the deceased was a retired Government Officer and he had an Iridium Petromax Light in his house and several brokers approached him to buy it; that the deceased refused to sell the light; that the accused entered into a conspiracy and decided to take away the light and pursuant to the said conspiracy, on 15.08.2016, A1 along with the other accused trespassed into the house of the deceased and committed dacoity and murder; and that A7 made the defacto complainant/P.W.1 to sit on a sofa in the front room and the other accused caused the death of the deceased and took away



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the gold jewels and also the Iridium Petromax Light.

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6. The learned counsel for the petitioner submitted that the prosecution case rests on the evidence of P.W.1, whose version in the complaint is different from her deposition in the Court. Earlier she had stated in her complaint that four persons were involved in the occurrence and in her deposition before the Court she had stated that about six persons were involved, and she had not identified the petitioners in Court and hence prayed for suspension of sentence imposed on the petitioners.

7. The learned Additional Public Prosecutor, per contra, submitted that, during investigation, the petitioners involvement was found out and the evidence adduced by the prosecution has been rightly appreciated and the petitioners were convicted by the trial court and hence prayed for dismissal of the petition.

8. We have carefully considered the rival submissions and perused the records. We find that P.W.1 in Ex.P1 complaint has stated that four persons were



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involved in the occurrence. However, in the deposition, she would state that six persons were involved. Even in the Test Identification parade, PW1 could not identify the petitioners. That apart, there is no recovery from A4 and A5 and even the bike alleged to have been recovered from A6 has nothing to do with the alleged offence. In such circumstances, we are of the view that the petitioners/appellants have a fair chance of success in the appeal. We hasten to add that this is an expression of our *prima facie* view. We had earlier suspended the sentence by the order dated 07.03.2024, in respect of similarly placed accused in Crl.M.P.No.20300 of 2023 in Crl.A.No.1670 of 2023.

9. Considering the above facts and since the petitioners are in incarceration from 07.10.2023 and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Mettur, Salem.
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and



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mobile numbers to ensure their identity;

(iii) The petitioners shall appear before the trial Court on the first working day of every 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.

(M.S.R., J.) (S.M., J.)
26.04.2024

Tsg
Internet : Yes
Index : Yes / No

Note to office : Issue Order Copy on 29.04.2024
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To

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1. The Sessions Judge,
Magalir Neethi Mandram (Mahila Court),
Salem.
2. The Judicial Magistrate No.II, Mettur, Salem.
3. The Inspector of Police,
Karumalaikoodal Police Station,
Mettur, Salem District,
Crime No.217 of 2016
4. The Superintendent,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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Dated: 26.04.2024