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Crl.M.P.Nos.4107 & 4110 of 2024
in Crl.R.C.No.423 of 2024

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M. NIRMAL KUMAR, J.

These Criminal Miscellaneous Petitions have been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in C.C.No.9487 of 2003 by a judgment dated 03.09.2018 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai as confirmed in C.A.No.548 of 2018 dated 05.09.2023 on the file of XVI Additional Sessions Judge, City Civil Court, Chennai and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner/A1 was tried along with three others/A2 to A4 in C.C.No.9487 of 2003. The trial Court, by judgment dated 03.09.2018, convicted the petitioner/A1 and other accused for offence under Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.3,000/- in



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default to undergo eight weeks simple imprisonment. Aggrieved over the same, the petitioner/A1 preferred an appeal in C.A.No.548 of 2018 before the XVI Additional Sessions Judge, City Civil Court, Chennai. The Sessions Judge, by judgment dated 05.09.2023, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the petitioner preferred a revision in Crl.R.C.No.423 of 2024 before this Court along with petitions seeking suspension of sentence and bail.

3.The brief facts of the case is that the de-facto complainant/Sub Inspector of Police, Railway Protection Force, Egmore, Chennai registered a complaint on getting information from Tambaram Divisional Engineer that in Egmore Railway Station the Mahindra Jeep belonging to Southern Railway bearing Registration No.TN-21-Z-1136 was found missing. The complainant was keeping a watch for the vehicle. On 04.02.2002, at about 3.45 p.m. he found the Jeep proceeding near Corporation Hospital, Jones Road, Saidapet but with a different registration No.TN-49-W-1462. On suspicion, he stopped



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the vehicle. The petitioner Murugan/A1/driver, Johnson Ramesh/A2 and Ilangovan/A3 were in the Jeep, were enquired. Further the Jeep was inspected and found that the number plate of the vehicle was found to be new and the Chassis number tampered and the Engine number was found erased. On examination of the four wheels and Battery, the original registration No.TN-21-Z-1136 was found to be written in yellow colour paint, which is the procedure of Southern Railway. In the rear side aluminium foot rest it was written as C.N.T.E.E., R.S.Tambaram. Thereafter, the respondent police arrested the accused and they gave confession statement admitting along with A4/Nalini Sundaram commissioned the offence. Thereafter, in the presence of witnesses, observation mahazar and rough sketch prepared and the vehicle was sent for forensic examination, received the report. The officials of Southern Railway were examined, who confirmed that the vehicle belongs to Southern Railway and R.C. Book also seized.



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4. During trial, on the side of the complainant, PW1 to PW19 examined and marked Exs.P1 to P36 and marked material objects M.O.1. to M.O.4. On the side of the defence, no witnesses examined and no documents marked. During trial, A4/Nalini Sundaram passed away and A3/Ilangovan pleaded guilty. The Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner/A1 and A2 and on appeal, the same was confirmed by the Lower Appellate Court.

5. The contention of the learned counsel for petitioner is that the trial Court convicted the petitioner merely on assumption and presumption not on legal evidence. PW3 gives contradictory version with regard to entrustment of the vehicle with him, its usage and the place where he parked the vehicle and from which date the vehicle was found missing. PW4 produced only the photostat copy of the R.C.Book. PW6 not confirmed that the petitioner was in the Jeep when it was intercepted and searched. PW8 confirms that it is Nalini Sundaram/deceased accused, who entrusted the Jeep



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to him to make some paintings. PW8 does not state anything about the petitioner. PW9 admits that he does not know in which documents he signed and he is not certain about the Jeep number. Hence, the evidence of PW8 and PW9 cannot be acted upon. PW11 in his evidence states that he has lodged a complaint about the missing of R.C.Book to the J-1, Saidapet Police Station and this complaint was suppressed and none from the Saidapet Police Station examined. Thus there are several infirmities and contradictions in the evidence of witnesses. Further the learned counsel submitted that there is no charge of conspiracy that the petitioner conspired with the other accused including A4 in commission of the offence and the benefit of doubt ought to have been given to the petitioner. On the contrary, the petitioner was convicted by the trial Court, the Lower Appellate Court failed to independently consider the evidence and materials and dismissed the appeal.

6.He further submitted that the petitioner is affected with serious health ailments. The petitioner was admitted in Kilpauk Medical Hospital for



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tongs fungal infection from 15.09.2023 to 05.10.2023. Thereafter, he was shifted to Rajiv Gandhi Government Hospital and took treatment as inpatient. Only during January, 2024, he was discharged from the hospital but still he is under treatment. He is bedridden attached with urine bag. Without the assistance and support of a attender he cannot move around and even attend his nature's call. Further submitted that the petitioner has arguable points and has fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioner.

7.The learned Government Advocate (Crl. Side) submitted that on the complaint of PW1, a case was registered. The railway property Jeep/M.O.1 was stolen and removed from the custody of the railway. The vehicle was found missing on 31.12.2001 and a complaint was received from the Divisional Engineer, Tambaram. Thereafter, the Railway Protection Force formed a team, made enquiry and were keeping a watch for the vehicle. On



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04.02.2002, the Mahindra Jeep bearing registration No.TN-21-Z-1136 was found near Corporation Hospital, Jones Road, Saidapet. On suspicion, the vehicle was intercepted, the petitioner/A1 was driving the Jeep, A2 and A3 were travelling along with him. Thereafter, on enquiry, they had given contradictory statements. On inspection it was found that the number plate was newly placed with registration No.TN-49-W-1462. On further examination it was found that Engine number and Chassis number were erased and changed. In the battery, the original registration No.TN-21-Z-1136 was written in yellow colour paint. Thereafter, the tyres were removed and on the inner side of the tyres the original registration number was found, which is the identification mark made by the Southern Railway. The rear side foot rest was with embossing of the railways. Thereafter the accused gave statements to the Railway Protection Force admitting the guilt. In the presence of witnesses, statements recorded, vehicle seized, observation mahazar and rough sketch prepared. Thereafter, the vehicle sent for forensic



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examination. The forged documents of the vehicle were seized. Thereafter, on examination of the railway authorities, collection of documents and getting report from the Forensic Department, complaint filed. During trial, A4 passed away and A3 admitted his guilt. A1 and A2 stood trial.

8.Further, the learned Government Advocate on enquiry through the respondent police confirmed the health condition of the petitioner and produced the medical records confirming petitioner was seriously ill, took treatment as inpatient in Kilpauk Medical Hospital as well as in Rajiv Gandhi Government Hospital, now attached with urine bag and bedridden. However, he prays for dismissal of the petition.

9.Considering the submissions made and on perusal of the materials available on record, it is seen that the entire case revolves around A4, who passed away on 12.03.2002. The said A4 is said to have approached PW11 to buy a Jeep bearing registration No.TN-49-W-1462 and had taken



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the Jeep for test drive, at that time he removed the original R.C.Book of the vehicle, using the same, the stolen railway Jeep, registration, Engine and Chassis numbers altered. This petitioner and A4 though closely related, there is no charge of conspiracy. The petitioner and other accused were found in possession of railway property, for which, they were unable to give proper explanation. Finding that the explanation is untenable the trial Court as well as the Appellate Court convicted the petitioner and sentenced six months imprisonment. The petitioner is bedridden with health ailments, confirmed by the respondent, and produced medical records. In view of the same, this Court is inclined to grant suspension of sentence to the petitioner.

10. Accordingly, the reliefs of suspension of sentence, exemption for surrendering and bail are granted on the following conditions till the disposal of the above Criminal Revision:

(a) The petitioner/A1 is ordered to be enlarged on bail, on condition that he shall execute



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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 learned XI Metropolitan Magistrate, Saidapet, Chennai.

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

(c) The petitioner/A1 shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he 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.



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11. Accordingly, these Criminal Miscellaneous Petitions are
ordered.

22.03.2024
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To

- 1.The Inspector of Police,
Railway Protection Force,
Egmore,
Chennai – 600 008.
- 2.The XI Metropolitan Magistrate,
Saidapet, Chennai.
- 3.The XVI Additional Sessions Judge,
City Civil Court, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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