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*Crl.M.P.Nos.11629 and 11631 of 2024
in Crl.RC.No.1365 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.Nos.11629 and 11631 of 2024
in
Crl.RC.No.1365 of 2024

1. Kaliyamoorthy
2. Kaipillai @ Senthilkumar

... Petitioners in both

Crl.MPs

Vs.

The State
Rep. by the Inspector of Police,
Thiruvengadu Police Station,
Sirkazhi District.
(Cr.No.244/2012)
Crl.MPs

... Respondent in both

CMP No.11629 of 2024: Criminal Miscellaneous Petition has been filed under Section 483 (1) of the BNSS Act to suspend the substantial sentence of imprisonment imposed on the petitioners by the judgment of the Assistant Sessions (Sub Court) Sirkazhi in S.C.No.117 of 2017 dated 26.09.2023 as confirmed by the order of the District and Sessions Court Mayiladuthurai in C.A.No.20 of 2023 dated 29.04.2024 and enlarge the petitioners on bail pending disposal of the above Criminal Revision Case.



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CMP No.11631 of 2024: Criminal Miscellaneous Petition has been filed under Section 528 of the BNSS Act to grant exemption from surrendering to the petitioners in S.C.No.117/2017 order of conviction dated 26.09.2023 on the file of the Assistant Sessions (Sub Court) Sirkazhi and confirmed by the Sessions Court Mayiladuthurai in Judgment in C.A.No.20/2023 dated 29.04.2024, pending disposal of the above mentioned Criminal Revision Case.

For Petitioners : Mr.J.Baranidharan

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

COMMON ORDER

The petitioners are Accused No. 1 and 3 in S.C. No. 117 of 2017 and they were convicted by the Trial Court for the offence under section 436 of IPC and sentenced to undergo simple imprisonment for five years and to pay fine of Rs.1,000/-, in default to pay fine amount, to undergo one month simple imprisonment. Challenging the judgment of conviction and sentence imposed by the trial court, the petitioners have preferred appeal in Crl. A. No.20 of 2023 before the District and Sessions Court Mayiladuthurai and the said appeal was dismissed, by judgment dated 29.04.2024. Aggrieved by the same, the petitioners have preferred the Criminal Revision Cases viz., Crl.RC



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No.1365 of 2024, along with these two Criminal Miscellaneous Petitions.

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2. The reliefs sought in these Criminal Miscellaneous Petitions are as follows:

(i)suspension of sentence of imprisonment imposed on the petitioners by the learned Assistant Sessions Court (Subordinate Court), Sirkazhi, by judgment dated 26.09.2023 passed in SC No.117 of 2017, which was confirmed by the learned District and Sessions Judge, Mayiladuthurai, by judgment dated 29.04.2024 in Crl.A.No.20 of 2024 and enlarging them on bail, pending disposal of the Criminal Revision Case.

(ii)exemption from surrendering, pursuant to the above said judgments of the courts below, pending disposal of the Criminal Revision Case.

3. Admittedly, the petitioners are villagers, who have enmity with the defacto complainant and they have been falsely implicated in this case. The case of the prosecution is that on 01.09.2002, the petitioners along with A2 cut a tree near the house of PW1 and set fire to the house of PW1. It is stated that there is no reason as to why the petitioners should set fire to the house of the PW1. The evidence of PW1 is untrustworthy, however, based on his evidence, the trial court convicted the petitioners.



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4. The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioners, on the date of the judgment did not appear before the lower Court. Now, they are convicted by the trial court, based on which the police is attempting to apprehend them to undergo the sentence imposed by the trial court, confirmed by the lower Appellate Court. Now, they have come up with this petition seeking exemption from surrendering before the Court below and to enlarge them on bail.

5. This Court is not inclined to entertain the exemption petition and hence, the exemption petition is dismissed. In view of the fact that the petitioners have been convicted by the trial court after following the due process of trial, the petition for suspension of sentence cannot be considered at this stage, and hence, the same is also dismissed.

6. Accordingly, both these Criminal Miscellaneous Petitions are dismissed.

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- To
1. The Assistant Sessions (Sub Court),
Sirkazhi
 2. The District and Sessions Court,
Mayiladuthurai
 3. The Inspector of Police,
Taluk Police Station,
Villupuram District.
 4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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