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Crl.M.P.No.13150 of 2024 in Crl.R.C.No.1365 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.13150 of 2024

in

Crl.R.C.No.1365 of 2024

1.Kaliyamoorthy
S/o.Munusamy

2.Kaipillai @ Senthilkumar
S/o.Arumugam

... Petitioners

Vs.

State Rep. by
Inspector of Police,
Thiruvengadu Police Station,
Sirkazhi District,
Crime No.244 of 2012.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS/389(1) Cr.P.C, to suspend the sentence of imposed on the petitioners by the District and Sessions Judge, Mayiladuthurai in Crl.A.No.20 of 2023 dated 29.04.2024 confirming the order of Assistant Sessions Courts (Subordinate Court) Sirkazhi in S.C.No.117 of 2017 dated 26.09.2023 and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

For Petitioners : Mr.R.Sivakumar



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for M/s.K.M.Vijayan Associates

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For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioners by the learned District and Sessions Judge, Mayiladuthurai in Crl.A.No.20 of 2023 dated 29.04.2024, confirming the order of the learned Assistant Sessions Judge, (Subordinate Court) Sirkazhi in S.C.No.117 of 2017 dated 26.09.2023 and enlarge the petitioners on bail pending disposal of the above Criminal Revision.

2. The petitioners are accused Nos.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 an 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 filed the above Criminal Revision Case. Pending Criminal Revision Case, the petitioners have filed petitions for suspension of sentence and exemption from surrender in Crl.M.P. Nos.11629 of 2024 and 11631 of 2021 respectively, which were dismissed vide common order dated 21.08.2024. Hence the present petition.

3. The case of the prosecution is that on 01.09.2002, the petitioners (A1 and A3) along with A2 cut a tree near the house of P.W.1/the de-facto complainant and set fire to his house. It is stated that there is no reason as to why the petitioners should set fire to the house of P.W.1. The evidence of P.W.1 is untrustworthy, however, based on his evidence, the trial Court convicted the petitioners.

4. The learned counsel for the petitioners submitted that due to previous enmity between the petitioners and the de-facto complainant, a false complaint has been foisted against the petitioners.

5. The learned Additional Public Prosecutor has filed a counter and has stated that the de-facto complainant has lodged a complaint to the respondent/police stating that he is residing at Pattavali Street, Radhanallur



and he is a labourer. There was a civil dispute between Rajagopal/P.W.1 and Kaliyamoorthy/A1 and due to previous enmity between them on 09.01.2012, when the de-facto complainant was out of town, the accused persons had cut down and sold 'Karuvalam Tree" belongs to the de-facto complainant and set fire to the house of the de-facto complainant. Thereby, the respondent/police registered a case in Crime No.244 of 2012 under Section 436 IPC on 01.09.2012. The investigating officer went to scene of occurrence, examined the witnesses, recorded their statements, produced the collected materials and laid a final report. He further submitted that during trial, PW1 to PW8 were examined and Exs.P1 to P6 were marked and two Material Objects were marked as MO1 and MO2 on the side of the prosecution. On conclusion of the trial, the trial Court convicted the petitioners for the offences under Section 436 IPC and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-. He further submitted that on 19.09.2024, the respondent/police secured the petitioners and now they are confined in Central Prison, Trichy.

6. Considering the submissions and on perusal of the materials, it is seen that when the defacto complainant was out of station, the accused persons set fire to his house. Though P.W.3 to P.W.6 were projected as eye witnesses and



deposed that there was a property dispute between the petitioners and the de-facto complainant, they are close relatives of the complainant. Therefore, the arrest of the petitioners appears to be doubtful and they have been falsely implicated in this case.

7. In view of the same, the substantive sentence of imprisonment imposed on the petitioners is suspended till the disposal of the above revision and they are ordered to be enlarged on bail, on condition that each of the petitioners shall execute a bond for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8. Further, the petitioners shall appear before the Trial Court at 10.30 a.m., on the first working day of every English Calender month until the disposal of the Criminal Revision and if they are not able to appear before the Trial Court on that 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 the same month in lieu of the date of their absence as directed by the Trial Court.



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9. Accordingly, this Miscellaneous Petition is ordered.

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To

- 1.The District and Sessions Judge,
Mayiladuthurai.
2. The Assistant Sessions Judge,
Subordinate Court,
Sirkazhi.
3. The Superintendent,
Central Prison, Trichy.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Inspector of Police,
Thiruvengadu Police Station,
Sirkazhi District.



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M.NIRMAL KUMAR, J.

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