



*Crl.M.P.Nos.15420 & 15421 of 2024
in Crl.R.C.No.1880 of 2024*

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SUNDER MOHAN, J.

These Criminal Miscellaneous Petitions have been filed by the petitioners/A1 & A2, seeking to suspend the sentence imposed on the revision petitioners/accused in C.A.No.7 of 2023 dated 25.09.2024 by the learned District and Sessions Judge, Mayiladuthurai, by modifying the judgment in CC.No.199 of 2018 dated 24.01.2023 on the file of the Judicial Magistrate No.I, Mayiladuthurai, and enlarge the petitioners on bail and to exempt the petitioners from surrendering before the trial Court, pending disposal of the above revision.

2. The case of the prosecution is that the defacto complainant/2nd respondent herein was working abroad; that the petitioners are closely related to him; that the defacto complainant's wife is the younger sister of the 1st petitioner; that the defacto complainant had sent Rs.24,67,325/- to the account of the petitioners to be invested in a fixed deposit.

3. Before the trial Court, though charges were framed against the petitioners/accused for the offences under Sections 294(b), 420 and



506(ii), the trial Court found the petitioners/accused not guilty and acquitted them of the charges.

4. On appeal, the appellate Court found the petitioners/accused guilty of the offence under Section 420 of the IPC and sentenced both of them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.50,000/- each, in default to undergo rigorous imprisonment for one year each. Challenging the same, the petitioner has filed the above Criminal Revision Case and pending revision, has filed the instant Criminal Miscellaneous Petitions for suspension of sentence and exemption from surrendering before the trial Court.

5. (i) The learned counsel for petitioners would submit that it is a case of a civil transaction between close relatives; that the prosecution case is that the defacto complainant had sent money to the petitioners to invest in a fixed deposit and did not do so; that defacto complainant had contradicted himself in his deposition by stating that he had given money for business purposes and he had also admitted that the petitioners had repaid a portion of the amount; that in any case, it would at best only be a breach of promise even if the prosecution case is accepted to be true; and



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that no deception is made out.

(ii) The learned counsel for the petitioners further submitted that though the trial Court have acquitted the petitioners for the offences under Sections 294(b), 420 and 506 (ii) of the IPC, the appellate Court found the petitioners guilty of the offence under Section 420 of the IPC.

6. Though notice was served on the defacto complainant/2nd respondent and his name is printed in the cause list, none has entered appearance.

7. The learned Government Advocate (Crl.side) appearing for the 1st respondent/State, *per contra*, would submit that the prosecution has established its case beyond reasonable doubt; that therefore the petitioners have not made out any ground for exemption from surrendering and suspension of sentence and prayed for dismissal of both the petitions.

8. Heard the learned counsel for the petitioner and the learned



Government Advocate (Crl.Side) appearing for the 1st respondent/State
and perused the records.

9. This Court on perusal of the complaint and the deposition of PW1, finds that the defacto complainant had contradicted himself as to the reason for his transferring the money to the petitioners. Admittedly, the petitioners and the defacto complainant are closely related to each other. The defacto complainant had also admitted the receipt of certain payments from the petitioners.

10. Considering the submissions made by the learned counsel for the petitioner and the above facts, the points raised by the petitioners require consideration in the revision and hence, this Court is inclined to grant suspension of sentence to the petitioner and exempt him from surrendering before the trial court.

11. Accordingly, this Court grants the relief of suspension of sentence imposed on the petitioner and exempt the petitioner from surrendering before the trial court, on the following conditions till the disposal of the above Criminal Revision:



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(a) The petitioner is ordered to be enlarged on bail, on condition that he 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 trial Court;

(b) The petitioner shall appear before the Trial Court on the first working day of a month at 10.30 a.m., 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; and

(c) In the event of failure on satisfying the above conditions, this order would stand automatically cancelled.

12. Accordingly, these Criminal Miscellaneous Petitions are ordered.

18.11.2024
(2/2)

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To

- 1.The District and Sessions Judge, Mayiladuthurai.
- 2.The Judicial Magistrate No.II, Mayiladuthurai.
- 3.The Public Prosecutor, High Court, Madras.



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