



*Crl.M.P.No.18775 of 2023
in Crl.RC.No.2031 of 2023*

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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

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

Crl.M.P.No.18775 of 2023

in

Crl.RC.No.2031 of 2023

1. Thalapathi
S/o.Muniappan

2. Chandru
S/o.Sakthivel

... Petitioners

Vs.

State rep by
Inspector of Police,
Kitchipalayam Police Station,
Salem District.
(Crime No.286 of 2021)

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 397(1) of Cr.P.C to enlarge the petitioners on bail by suspending the sentence imposed in S.C.No.139 of 2022 dated 13.07.2023 by the Assistant Sessions Court cum Chief Judicial Magistrate, Salem confirmed in C.A.No.140 of 2023 dated 18.11.2023 on the file of the 1st Additional Sessions Court, Salem pending disposal of Criminal Revision Petition.



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For Petitioners : Mr.T.Muruganantham
For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence of imprisonment imposed on them in S.C.No.139 of 2022 by a judgment dated 13.07.2023 on the file of the Assistant Sessions Court cum Chief Judicial Magistrate, Salem confirmed in CA.No.140/2023 dated 08.11.2023 on the file of the 1st Additional Sessions Court, Salem and to enlarge the petitioners on bail pending disposal of the above Criminal Revision.

2. The petitioners/A2 & A3 in S.C.No.139 of 2022 were convicted by the trial Court for offence under Sections 341, 147 and 307 r/w 149 of IPC and the petitioners were sentenced as follows:

<i>S.No.</i>	<i>Offences</i>	<i>Punishment</i>
1.	Section 341 IPC	To undergo each one month simple imprisonment and to pay a fine of Rs.500/- each, in default of payment of fine, to undergo each one week Simple Imprisonment
2.	Section 147 IPC	To undergo six months simple imprisonment and to pay a fine of Rs.1000/- each for offence under Section 147 IPC in default of



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S.No.	Offences	Punishment
		payment of fine, to undergo each one month Simple Imprisonment.
3.	Section 307 r/w 149 IPC	to undergo each 5 years Rigorous Imprisonment and fine of Rs.5000/- each, in default of payment of fine, to undergo each one month simple imprisonment.

Aggrieved against the same, the accused have preferred the appeal before the Sessions Court, Salem in CA.No.140 of 2023, wherein the learned Sessions Judge by judgment dated 08.11.2023 dismissed the appeal confirming the conviction and sentence imposed in SC.No.139 of 2022. Against which, the present revision has been filed by the petitioners/A2 & A3. The present miscellaneous petition seeking suspension of sentence and bail is filed by the accused.

3. During trial, on the side of the prosecution, PW1 to PW10 examined and marked Exs.P1 to P8 and 4 Material objects. On the side of the defence, no witnesses examined and no document was marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioners as stated above.



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4.The contention of the learned counsel for the petitioners is that totally there are five persons have been arrayed as accused in Crime No.286/2021. Since A5 was juvenile, the case against A5 was tried before the J.J.Board. A1 to A4 faced the trial. The case of the prosecution is that A1 and PW1 were having some enmity between them, due to which, on 18.05.2021 at about 8.30.pm, when the PW1 along with his friend were were proceeding in a two wheeler, at that time A1, A4 and A5 were riding motorcycle in the opposite direction and dashed the Bike of PW1 and A1 and PW1 were having a verbal fight. The petitioners A2 and A3 came by walk is said to have caught hold of PW1 and A1 by using sickle attempted to attack PW1 on his head, PW1 attempted to abort the assault by blocking with his hands, he sustained a cut injury on his left hand. Thereafter, PW2 called for help and the accused escaped from the scene of occurrence. The overtact attributed against the petitioners is that they caught hold of witness-PW1 facilitating attack by A1. The presence of the petitioners in the scene of occurrence is highly doubtful, had the petitioners caught hold of PW1 as projected by the prosecution, the possibility of PW1 evading the attack and by defending with his hand sustaining injuries on his left wrist is not possible. He further submitted that PW2 who is the other eye witness states that A1 attacked PW1



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and other accused including A2 and A3 were standing guard, which is contrary to the evidence of PW1. Further, the doctor, who gave treatment to the injured not examined as witness in this case. PW8, Investigating Officer admits in his evidence that he had come to the conclusion that injury is simple injury, but on the opinion of Public Prosecutor, it was shown as grievous injury. The Trial Court not considered these aspects. Hence, he prays for granting suspension of sentence to the petitioners.

5. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the Injured/defacto complainant namely, Tr. Madhavan is residing at Door No.277, B-Block, Kalikavundarkadu, Housing Board, Kitchipalayam, the accused persons Sanjay [A-1], Thalapathi [A-2], Chandru [A-3], Satheesh @ Sowndar [A-4] and Shanmugi @ Shamugam [juvenile accused] are also residing at Kitchipalayam. A year back, the defacto complainant driven his two wheeler in a speedy manner about to dash A-1 and A-2. There was a wordy quarrel. In furtherance of that, the complainant assaulted the A-1 & A-2 and thereby. there was previous enmity between the complainant and the 1 and 2 accused. That on 18.05.2021 at about 8:30 pm the complainant and his friend Jana were proceeding in a two wheeler with Registration No. TN 54 B 8268 near Kalikavundarkadu, old



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bathroom. At that time the 1st accused came in his two wheeler TN 28 AA 2308 in the opposite direction with 4th accused and the juvenile in conflict with law Shanmugam @ Shanmugi and 2nd and 3rd accused were near the place of occurrence, all of them assembled unlawfully, restrained the complainant and his friend by force, abused using filthy language and the accused and the juvenile in conflict with law with a common intention to murder the complainant armed with Sickle (minat) attacked PW1, by uttering "இன்னைக்கு எங்களுடைய அடிச்சிட்டியாடா" and rounded the complainant and his friend, 2nd and 3rd accused caught hold of the complainant, the juvenile in conflict with law and the 4th accused were keeping watch that anybody near the place of occurrence, the accused by taking the Sickle from his hip and uttering "இனிமேல் உயிரோடு இருக்கக்கூடாது" and with intention that his act will cause the death of complainant, attempted to cut the neck of the complainant. The complainant evaded the assault of the 1st accused by using his left hand and he sustained injuries.

5.1. It is submitted that based on the above, a case was registered in Kitchipalayam Police Station Cr No. 286/2021, u/s.147, 148, 341, 294 (b). 307 IPC on 19.05.2021 at about 00.30 hours by Tr.Vinoth Kumar, then Inspector of Police and the same was submitted before Tr.Sivakumar, then



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Inspector of Police and took up the case for investigation.

5.2. It is submitted that the then Sub Inspector of Police went to the scene of occurrence, drew rough sketch prepared observation mahazer and also examined the witnesses and recorded their statements.

5.3. It is submitted that during the course of investigation, on 19.05.2021, then Inspector of Police arrested the accused persons and recorded their confession statement and also seized case property under cover of seizure mahazar, later they produced before the Learned Judicial Magistrate No.II, Kitchipalayam and sent to remand for judicial custody.

5.4. It is submitted that after completion of elaborate and detailed investigation, based on the witnesses statements, material evidence, on 19.03.2021, the then Inspector of Police altered the section 341, 294 (b). 147, 148, 307, 307 r/w.149 IPC and filed charge sheet against A-1 to A-4 before the Judicial Magistrate No.II, Kitchipalayam and the juvenile accused Shanmugi @ Shanmugam, aged 17 years before the Juvenile Justice Board, Salem and the same was taken cognizance vide PRC.No.34 of 2022 and J.C.No.39/2022, dated: 15.07.2022. Then this case was committed to the Assistant Sessions Court cum Chief Judicial Magistrate, Salem and assigned in S.C.No.139 of 2022.



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5.5. It is submitted that in order to prove the case of the prosecution, the prosecution has examined P.W.1 to P.W.10 and marked exhibits 8 and 4 material objects have been marked. On the defence side no witness were examined and no exhibits were marked.

PROSECUTION WITNESSES:-

Rank of witnesses	Witnesses	Gist of the deposition
P.W.1	Tr.Madhavan/defacto complainant /injured person	Narrated the facts and lodged a complaint before the respondent Police Ex.P.1 - complaint
P.W.2	Tr.Jana/eye witness	Deposed that corroborated the same version of P.W.1
P.W.3	Tr.Kaliyappan/father of P.W.1	Deposed that corroborated the same version of P.W.1
P.W.4	Tr.Srinivasan/confession witness	Deposed that attested in the confession statement of the accused and seizure mahazar Ex.P.2 & 3
P.W.5	Tr.Ranjith/eye witness	Deposed that corroborated the same version of P.W.1
P.W.6	Dr.Thenmozhi/G.H., Salem	Deposed that given treatment to P.W.1 and issued opinion
P.W.7	Tr.VinothKumar/Sub Inspector of Police	Deposed that received information from hospital, based on that, a case was registered n Cr.No.286/2021, u/s.147. 143, 341, 294 (b). 307 IPC Ex.P.4 and the same was submitted before P.W.10 for



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		investigation
P.W.8	Tr. Srinivasan/Inspector of Police	Deposed that took up the case for further investigation, after completion of investigation altered the section and filed charge sheet against the accused persons before the competent court in accordance with law.
P.W.9	Tr.Ramesh/observati on mahazar	Deposed that attested in the observation mahazar and rough sketch Ex.P.5 & 6
P.W.10	Tr.Sivakumar/Inspect or of Police	Deposed that took up investigation and went to the Scene of occurrence, drew rough sketch, prepared observation mahazer and also examined the witnesses and recorded their statements and arrested the accused, recovered the case properties and remanded the accused for judicial custody.

5.6. It is submitted that after conducting due trial, the Assistant Sessions Court cum Chief Judicial Magistrate, Salem its judgment dated 13.07.2023 in SC.No.139 of 2022 and convicted the petitioner/ accused for the following offences.

A-1 to A-4 U/s.341 of IPC	Sentenced them to undergo one month for S.I and imposed fine of Rs.500/- each i/d to undergo one week for S.I each
A-1 u/s.148 of IPC	Sentenced him to undergo one year for S.I and imposed fine of Rs.2000/-i/d. to undergo one month for S.I



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A-1 u/s.307 of IPC	Sentenced him to undergo 5 years for R.I and imposed fine of Rs.5000/- i/d. to undergo one month for S.I
A-2 to A-4 u/s.147 of IPC	Sentenced them to undergo 6 months for S.I and imposed fine of Rs.1000/- each i/d to undergo one month for S.I
A-2 to A-4 u/s.307 r/w.149 of IPC	Sentenced them to undergo 5 years for R.I and imposed fine of Rs.5000/- each i/d. to undergo one month for S.I each

5.7. It is submitted that aggrieved over the same, the petitioner has preferred an appeal before the | Additional District and Sessions Court, Salem in C.A. No.140/2023, dated:08.11.2023 confirming the judgment dated:13.07.2023 order passed in S.C.No.139 of 2022 on the file of the Assistant Sessions Court cum Chief Judicial Magistrate, Salem.

5.8. It is submitted that now, the petitioner/accused filed this petition to set aside the judgment passed in S.C.No.139 of 2022, dated:13.07.2023 by the Assistant Sessions Court cum Chief Judicial Magistrate, Salem confirmed in C.A.No.140 of 2023 dated:08.11.2023 on the file of the 1st Additional Sessions Court, Salem. The appellants/A2, A-3 are presently confined at Central Prison, Coimbatore since 13.07.2023 date of conviction.

Hence, prays for dismissal of the petition.

6. In this case, no doubt PW1 is the injured witness and he sustained injuries on his left wrist. Considering the submissions made and the fact that



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the possibility of PW1 sustaining injury on the left wrist is highly doubtful, had the petitioners A2 & A3 caught hold of PW1, the evidence of PW2 is that the petitioners were present and nothing more, hence this Court is inclined to suspend the sentence imposed on the petitioners.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioners/A2 & A3 are ordered to be enlarged on bail, on condition that they shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Principal POCSO Court, Salem.

(b) The petitioners/A2 & A3 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners/A2 & A3 shall appear before the respondent police every Monday at 10.30.a.m without fail, until the disposal of the revision.



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8. Accordingly, this Criminal Miscellaneous Petition is ordered.

**29.02.2024
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To

- 1.The Inspector of Police,
Kitchipalayam Police Station,
Salem District.
- 2.The Assistant Sessions Judge-cum-
Chief Judicial Magistrate,
Salem.
3. The Superintendent,
Central Prison,
Salem.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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