



**G.ILANGOVAN, J**

WEB COPY

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the II Additional Assistant Sessions Judge, Nagercoil in SC No.173 of 2019, dated 08/04/2024 and enlarge the petitioners on bail, pending disposal of the above said Criminal Appeal.

**2.The case of the prosecution in brief:-**

PW1 and PW4 were loving each other. On 10/10/2018, PW1 and PW4 planned to surrender before the Kanyakumari Police station for police protection. The love affair was opposed by the family members. On 12/10/2018, when they were proceeding to Kanyakumari Police Station in a Car bearing registration No.TN-09-BR-8925, the accused persons intercepted the Car with two Cars. All the accused armed with deadly weapons, constituted unlawful assembly and they indiscriminately assaulted PW1 to PW3 by using sickle, sticks and wooden log and abducted PW4 from the custody of PW1. On the basis of the complaint given by PW1, the case was registered against the accused persons.

3.The trial court found all the accused guilty of various offences detailed in the judgment, which need not be repeated hereunder.



4. Against the convention and sentence, all the accused filed this criminal appeal. Pending appeal, this petition is filed seeking suspension of sentence and release them on bail.

5. Heard both sides

6. Mr. M. Ajmal Khan, learned Senior counsel appearing for the petitioners 1, 4, 6 and 7/A1, A4, A6 and A7 would submit that PW4-daughter of A1 turned hostile, did not support the case of the prosecution; The prosecution has not approached the court with clean hands; It suppressed the previous complaint under Ex.D1; There is material contradiction between the previous complaint under Ex.D1 and the subject complaint and the evidence of PW1 to PW3; PW1 himself contradicted in his own earlier version against A1; No specific overtact was attributed; Even as per the case of the prosecution, A1 used only stick.

7. Mr. G. Karupusamy Pandian, learned counsel appearing for the petitioners 2 and 3/A2 and A3 would submit that according to the prosecution, the weapons used, which are sticks and stickle are not properly established; Only A3 is the relative of A1 and there is motive between A1 and PW1. So the involvement of A2 and A3 is doubtful; As per the evidence of the Investigating Officer, the



conspiracy theory was not established; The origin of the complaint is also not established, since two different versions were given by the prosecution; PW2 has stated that he did not write the complaint. But as per the evidence of PW2, only statement was given and not written complaint; The statement of the injured before the Doctor also creates doubt in the prosecution case; They have stated that about 50 persons assaulted them, but only 7 were charge sheeted.

8.Mr.S.Suresh Kumar, learned counsel appearing for the 5<sup>th</sup> petitioner/A5 would submit that no specific overtact was attributed against him; He was convicted with the aid of sections 147 and 148 IPC; PW1 is not clear in evidence against A5. He would further submit that he was not at all present in the place of occurrence; The presence of A5 was not stated by any one in the complaint.

9.Per contra, learned Additional Public Prosecutor would submit that there was love affair between PW1 and PW4. They planned to surrender before the police seeking police protection. At that time, A1 who is the father and A6 his son, conspired along with their relatives to rescue PW4 from the custody of PW1 with an intention to cause murder. They caused indiscriminating assault with aruval and sticks, causing grievous injuries to PW1 to PW3. They sustained fracture injuries. So, no indulgence need be shown for suspension.



WEB COPY

10. But perusal of the entire records shows that A1 was not in favour of the love affair between PW1 and PW4. Being the daughter, PW4 naturally supported the case of A1. Now she got married and living peacefully with children.

11. It is also seen that on the date of the occurrence, the accused went to rescue or abduct PW4 from the custody of the PW1. Enough though, material is available to show that the occurrence really happened, but the problem lies, who assaulted whom and what was the weapon used. PW1 to PW3 suffered grievous injuries. They have spoken clearly about the involvement of A1 to A3. But regarding others, there is no proper evidence with regard to the identification. Subsequent to the occurrence, it appears that no identification parade was also conducted. But the accused were identified by the prosecution witnesses during the course of the trial, since they are relatives.

12. Whether A4 to A7 really involved in the occurrence and whether they shared conspiracy with A1 is a matter for consideration at the time of appeal. But there is enough material against A1 to A3. So, it is too premature stage to consider their request for suspension.



13.Regarding A4 to A7, as noted above, identification has not been properly established. Moreover, it is also seen that there was no intention on the part of the accused to cause death to any one of the prosecution witnesses. Their aim was only to rescue PW4.

14.Even though, it is submitted on the side of the accused that they also suffered injuries, but no complaint was given. There is material contradiction between the earlier complaint given by PW1 and the present subject complaint. So, whether the offence under section 307 IPC made out is doubtful and which offence is made out against A1 and A3 can be considered at the time of appeal. So, regarding A1 to A3, as mentioned above, it is too premature stage to grant suspension of sentence to them. Regarding others namely A4 to A7, they are entitled for suspension of sentence.

15.In the result, this criminal miscellaneous petition **is dismissed in respect of petitioners 1 to 3/A1 to A3.** So far as the others namely the petitioners 4 to 7/A4 to A7, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and they are directed to be enlarged on bail on condition that they shall execute a bond for a



Crl.MP(MD)No.5234 of 2024

sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the II Additional Assistant Sessions Judge, Nagercoil and on further condition that they must report before the said court **on the first working day of every week at 10.30 am until further orders.**

**09/08/2024**

Index : Yes/No  
Internet: Yes/No

er

To,

- 1.The II Additional Assistant Sessions Judge,  
Nagercoil.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
- 3.The Superintendent,  
Central Prison,  
Palayamkottai.



WEB COPY



Cr1.MP(MD)No.5234 of 2024

**G.ILANGOVAN, J.,**

er

Cr1.MP(MD)No.5234 of 2024 in Cr1.A(MD)No.419 of 2024

09.08.2024