

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Ninth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V.MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.1027 of 2018

IN CRL RC.141/2018

A.LOGANATHAN,

[PETITIONER/APPELLANT/ACCUSED]

Vs

K.SELLAMUTHU,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC. No.141 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in C.C.NO.684/2009 on the file Judicial Magistrate No.I, Erode dated 02/11/2015 confirmed by the Judgment made in C.A.No.152/2015 on the court of 1st Additional District and Sessions Judge, Erode) dated 26/07/2017 and release him on bail pending disposal of the above Crl R.C.NO.141/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.141 of 2018 on the file of the High Court and upon hearing the arguments of M/S.C.SARAVANAN, Advocate for the petitioner the court made the following order:-

Petitioner was convicted for offences under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months by learned Metropolitan Magistrate, Fast Track Court No.I, Erode, under judgment in C.C.No.684 of 2009 dated 02.11.2015. The appeal preferred by petitioner in C.A.No.152 of 2015 on the file of learned I Additional District and Session Judge, Erode, came to be dismissed under judgment dated 26.07.2017. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for petitioner submits that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's surrender or being in confinement in availing the relief of suspension of sentence under Section 397 Cr.P.C. in exercise of revisional powers by this Court. The decisions of the Honourable Apex Court in **BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cri) 1380)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon

in this regard.

3. Heard, the learned Government Advocate on the submissions made by learned counsel for petitioner.

4. The above decisions have been relied upon time and again by this Court towards reaching the conclusion that in moving a revision against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

5. Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the revision as contended by learned counsel for petitioner and further the revision is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Erode, and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate No.I, Erode, within a period of two weeks from the date of receipt of a copy of this order and also the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

-sd/-
29/01/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE. [FOR INFORMATION]

3 THE 1ST ADDITIONAL DISTRICT
AND SESSIONS JUDGE, ERODE.

C.C. to M/S.C.SARAVANAN Advocate on payment of necessary charges

Order

in
CRL MP.1027/2018

in
CRL RC.141/2018

Date :29/01/2018

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copies of the BAIL/Anti.BAIL Orders in this format
ths : 29.01.2018