

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twentieth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.16663 of 2017

IN CRL RC.1618/2017

A.SENTHIL KUMAR,

[PETITIONER]

Vs

A.MUTHU,
S/O.M.AZHAGAPPAN,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.1618/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in C.A.No.117 of 2016 on the file of II Additional District and Sessions Judge, Tiruppur confirming the conviction and sentence passed by the Learned Judicial Magistrate No.II, Tiruppur in C.C.No.656 of 2012 dated 04.10.2016 and enlarge the petitioner on bail

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.1618/2017 No. on the file of the High Court and upon hearing the arguments of M/S.J.FRANKLIN, Advocate for the petitioner, the court made the following order:-

Notice to the respondent returnable in three weeks. Private notice is also permitted.

2. Petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act and sentenced to six months S.I and to compensation of Rs.4,00,000/-, ie., the cheque amount

to be paid to the complainant within three months from the date of Judgment, in default, to undergo three months S.I. by the learned Judicial Magistrate No.2, Tiruppur, under judgment in C.C.No.656 of 2012 dated 04.10.2016. The appeal preferred by the petitioner in C.A.No.117 of 2016 on the file of learned Principal District and Sessions Judge, Tiruppur came to be dismissed under judgment dated 31.07.2017. Hence, petitioner seeks suspension of sentence.

3. Learned counsel for the 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. He would further submit that he has already deposited a sum of Rs.50,000/- before the trial Court.

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.2, Tiruppur and on further condition that the petitioner shall deposit 50% of the cheque amount i.e. Rs.4,00,000/- after deducting the amount of Rs.50,000/- already deposited by the petitioner before the trial court, before the learned Judicial Magistrate No.2, Tiruppur, on failing which, this petition shall stand dismissed automatically. The

petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

-sd/-
20/03/2018

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 II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, TIRUPPUR

2 THE JUDICIAL MAGISTRATE,
NO.II, TIRUPPUR

3 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR (FOR INFORMATION)

+1 C.C. to M/S.J.FRANKLIN Advocate on payment of necessary charges Sr.NO.4058

Order
in
CRL MP.16663/2017
in
CRL RC.1618/2017

Date :20/03/2018

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

MD: 20/03/2018