

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Third day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V.MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.4737 of 2018

in CRL.RC.NO.391/2018

R.SENTHILVELU

[PETITIONER]

Vs

K.VELUMANI

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC. No.4737 OF 2018 on the file of the High Court, the High Court will be pleased to Suspend the sentence and grant bail to petitioner in C.A.No.220/2017 dated 20.12.2017 by the 1st Addl. District and Sessions Judge, Erode, by confirming the order passed in S.T.C.NO.281 of 2015 dated 18.4.2017 by the Judicial Magistrate, Fast Track No.2, Erode.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.4737 of 2018 on the file of the High Court and upon hearing the arguments of MR.K.GANDHI KUMAR Advocate for the petitioner the court made the following order:-

Notice to the respondent returnable by 11.04.2018. Private notice is also permitted.

2. Petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo one year S.I and to pay a fine of Rs.5,000/-, in default to undergo two months S.I. in default to undergo three months S.I. by the learned Judicial Magistrate (Fast Track Court No.II) Erode under judgment in S.T.C.No.281 of 2015 dated 18.04.2017. The appeal preferred by the petitioner in C.A.No.220 of 2017 on the file of learned I Additional District and Sessions Judge, Erode, came to be dismissed under judgment dated 20.12.2017. 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.

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 Judicial Magistrate (Fast Track Court No.II) Erode and on further condition that the petitioner shall deposit 50% of the cheque amount before the Judicial Magistrate (Fast Track Court No.II) Erode and also the petitioner shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m. pending revision.

-sd/-
23/03/2018

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 JUDICIAL MAGISTRATE,
FAST TRACK COURT NO.II, ERODE.

2 THE 1ST ADDL. DISTRICT AND
SESSIONS JUDGE, ERODE.

+1 C.C. to M/S.K.GANDHI KUMAR Advocate on payment of necessary charges-Sr.5680

Order

in

CRL MP.4737/2018

IN CRL.MP.4737/2018

Date :23/03/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
THS : 23.03.2018