

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twentieth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice V. PARTHIBAN

CRIMINAL MISCELLANEOUS PETITION No.16318 of 2018

IN CRL A.No.788 of 2018

PRASANTH

[PETITIONER/APPELLANT]

Vs

THE INSPECTOR OF POLICE
METTUR POLICE STATION,
SALEM DISTRICT.
CRIME NO. 916 OF 2013.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.No.788 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by judgement dated 20.11.2018 made in SC.No.325 of 2014 on the file of Mahila Court, Salem and release the petitioner on bail, pending disposal of the CRL A.No.788 of 2018 [CRL.M.P.No.16318 of 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.No.788 of 2018 on the file of the High Court and upon hearing the arguments of M/S.N.A.RAVINDRAN, Advocate for the petitioner, and of Public Prosecutor on behalf of the Respondent, the court made the following order:-

The above criminal appeal has been filed against the order passed by the Mahila Court, Salem, in S.C.No.325 of 2014 dated 20.11.2018, convicting and sentencing the appellant/accused under Section 306 of IPC. The learned counsel appearing for the appellant/accused has moved C.M.P.No.16318 of 2018 seeking to suspend the sentence imposed on the petitioner by the trial Court vide its order dated 20.11.2018, pending finalisation of the appeal before this Court.

2 According to the learned counsel for the petitioner/accused that the ingredients of Section 306 of IPC are not attracted at all in this case and the suicide committed by the deceased was not due to any overt act of the petitioner/accused, but, due to frustration. According to the petitioner/accused that the abetment means involvement of instigation, intentionally aiding a person to do a particular thing and there must be a clear *mens rea* on the part of the accused in abetting commission of offence under Section 306 of IPC.

3 In support of his contention, the learned counsel would rely on the decision of the Hon'ble Supreme Court of India reported in **(2011) 3 SCC 626 (M.Mohan vs. State represented by the Deputy Superintendent of Police)** and he would draw reference to paragraph nos.44 and 45, which are extracted hereunder:

44. "Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or to aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

The learned counsel would further rely on a decision of this Court reported in 2016 (4) MLJ (Criminal) 240 (Manikandan vs. State, rep. by the Inspector of Police, Thiruneelakudi Police Station, Thanjavur District), wherein, the learned Judge of this Court has held as follows in interpreting Section 306 of IPC, and the same is extracted hereunder:

"C.Indian Penal Code, 1860 Section 306 Abatement of Suicide - It is not the wish and willingness nor the desire of the victim to die, it must be the wish of the accused, it is the intention on the part of the accused that the victim should die that matters much - There must be a positive act on the part of the accused - It need not be by words - It may be by deeds - It may be by letters - But, at the same time, the decision of a weak minded or a woman of frail mentality cannot be misunderstood as abetment - For one's foolish act another person cannot be made liable."

The learned counsel appearing for the petitioner/accused would therefore submit that in this case there was no material placed before the trial Court to establish the nexus between the overt act of the petitioner/accused and the commission of suicide by the deceased. In such circumstances, the petitioner is entitled to grant of suspension of sentence, pending finalisation of the criminal appeal. He would also point out certain other infirmities in the prosecution case.

4 On the other hand, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that the conviction was based on the dying declaration by the deceased. The

dying declaration was cogent and clear and such dying declaration can be the sole basis for convicting a person under Section 306 of IPC. A detailed counter affidavit has been filed by the respondent police. The learned Government Advocate would also draw reference to the decision of the Hon'ble Supreme Court of India reported in **(2011) 6 SCC 355**, wherein, it has been held that dying declaration can be the sole basis for conviction. She would therefore submit that the conduct of the petitioner/accused has driven the deceased to commit suicide and therefore the trial Court has rightly convicted the petitioner/accused and therefore he is not entitled to any relief particularly, suspension of sentence.

5 This Court considered the rival submissions made by the learned counsels appearing for both the parties and perused the materials placed on record and also the citations relied on by both the learned counsels.

6 No doubt the Hon'ble Supreme Court, in the case relied on by the learned Government Advocate (Crl.Side) appearing for the respondent, has held that dying declaration can be the sole basis for conviction, and the same is to be proved to be reliable and voluntary and truthful, but whether the said dying declaration can be the sole basis for convicting a person under Section 306 is a moot point. As held by the Hon'ble Supreme Court and this Court in the decisions relied on by the learned counsel appearing for the petitioner that the abetment involves mental process of instigating or intentionally aiding a person, which means that there must be some clinching material other than a mere commission of suicide is required in order to attract the ingredients of Section 306. The commission of suicide *per se* cannot attract Section 306 in all circumstances. Moreover, the dying declaration may point the responsibility of the petitioner/accused in the deceased committing suicide, but the moot point is whether there was any positive act or *mens rea* on the part of the petitioner/accused to drive the deceased to committing suicide is what is to be seen ultimately. There is some force in the contention put forth on behalf of the petitioner/accused that the deceased most probably committed suicide out of frustration forced by the predicament. Therefore, this Court is of the *prima faice* view that the suicide of the deceased may not *per se* attract Section 306 of IPC. In any event, this aspect has to be gone into detail, at the time, the appeal is taken up for final hearing. In the above circumstances, this Court is of the view that pending finalisation of the appeal, the petitioner/accused need not be incarcerated any further, since there is a doubt regarding the overt act of the petitioner/accused in driving the deceased to committing suicide.

7 In the result, the miscellaneous petition is ordered and the substantive sentence of imprisonment alone is suspended and the petitioner is released on bail on condition that the petitioner shall execute a bond for 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, Mettur, and the petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m until further orders.

-sd/-
20/12/2018

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.

[*]Amended as per order of this Court dated 10/01/2019 made in CRL.MP.NO.606 OF 2018 IN CRL.A.NO.788 OF 2018

TO

1 THE JUDICIAL MAGISTRATE NO.I
METTUR

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

3 THE MAHILA COURT
SALEM

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

**[*]5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE**

6 THE INSPECTOR OF POLICE
METTUR POLICE STATION,
SALEM DISTRICT

+1C.C. to M/S.N.A.RAVINDRAN Advocate on payment of necessary charges SR NO.763

Order

in
CRL MP.16318/2018

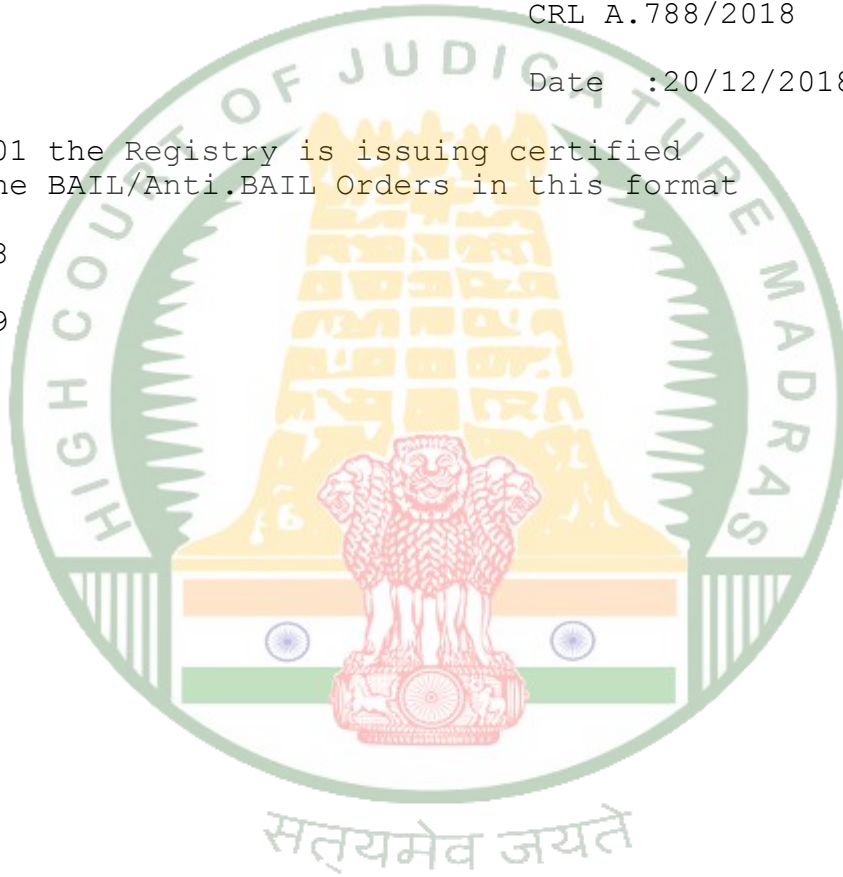
in
CRL A.788/2018

Date :20/12/2018

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

cm 21/12/2018

MK:10/01/2019



WEB COPY