

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty First day of June Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.6769 & 6770 of 2019

IN CRL RC.477/2019

K.MURUGESH

[PETITIONER]

Vs

K.SENTHILKUMAR

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.477/2019 on the file of the High Court, the High Court will be pleased to

[i]Suspend the sentence imposed on the petitioner in STC.No.509/2017 dated 04.08.2018 passed by the Learned Judicial Magistrate Fast Track Court No.I, Erode and the same was confirmed by the Learned II Additional Sessions Judge, Erode in Crl.A.No.260/2018 dated 18.03.2019 and release the petitioner on bail pending disposal of the above revision petition.[CRL.MP.NO.6769/2019]

[ii]exempt this petitioner from surrender on the file of learned II Additional Sessions Judge, Erode in Crl.A.No.260/2018 dated 18.03.2019 and release the petitioner on bail pending disposal of the above revision petition.[CRL.MP.NO.6770/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.477/2019 on the file of the High Court and upon hearing the arguments of M/S.A.M.AMUTHA GANESH Advocate for the petitioner and of MR.KRITIKA KAMAL.P Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

Permission is granted to the petitioner to inform the learned counsel who appeared for the complainant in the Trial Court and in the Sessions Court, about the pendency of this petition, so that, the complainant enters appearance.

2. The petition in Crl.M.P.No.6769 of 2019 has been filed to suspend the sentence imposed on the petitioner by judgment dated 18.03.2019 passed in Crl.A.No.260 of 2018 on the file of the II Additional Sessions Judge, Erode, confirming the judgment dated 04.08.2018 passed in S.T.C.No.509 of 2017 on the file of the Judicial Magistrate (Fast Track Court-I), Erode, and to enlarge the petitioner on bail. The petition in Crl.M.P.No.6770 of 2019 has been filed to

exempt the petitioner from surrender on the file of the learned II Additional Sessions Judge, Erode in CrI.A.No.260 of 2018 dated 18.03.2019 and release the petitioner on bail, pending disposal of the above revision petition.

3. For the sake of convenience, the parties are referred to as complainant and accused. It is the case of the complainant that on 07.10.2016, the accused borrowed Rs.10,00,000/- as loan towards which, he gave a cheque for the said sum on 07.07.2017, which was dishonoured. After issuing the statutory notice, the complainant initiated prosecution in S.T.C.No.509 of 2017 before the Judicial Magistrate (Fast Track Court-I), Erode, in which the accused was convicted and sentenced on 04.08.2018. The accused filed CrI.A.No.260 of 2018 before the learned II Additional Sessions Judge, Erode, which has been dismissed on 18.03.2019. Aggrieved by the same, the accused has filed the present Criminal Revision Petition and is seeking exemption from surrender and suspension of sentence.

4. The petitioner has raised substantial grounds in the revision petition which require detailed appraisal. Further, the revision petition is not likely to be taken up in the near future. Under normal circumstances, this Court would not grant the relief of exemption from surrender. However, learned counsel for the petitioner / accused brought to the notice of this Court that the complainant had not filed any document to show that the huge sum of Rs.10,00,000/- was given as hand loan on 07.10.2016, whereas the accused has given a reply notice dated 07.09.2017, marked as Ex.P5 in response to the statutory notice issued by the complainant. In the reply notice (Ex.P5), the accused has clearly taken a stand that the complainant and his wife were running chit business and that the accused had joined the chit and subscribed a sum of Rs.50,000/- and became a successful bidder. Towards the bid amount, the complainant had given signed, but blank cheques to the wife of the accused and that has been misused as if the cheque was given for the loan amount of Rs.10,00,000/-. Learned counsel also took this Court through the evidence of the accused, who examined himself as D.W.1 before the trial court. The accused also examined one Vinayagamoorthy as D.W.2.

5. Thus, there are prima facie materials to show that the trial court and the appellate court had failed to consider the reply notice Ex.P.5 and the evidence of D.W.1 and D.W.2 in the proper perspective. However, unconditional order of exemption from surrender cannot be passed. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence alone.

6. Accordingly, CrI.M.P.No.6769 of 2019 is allowed and CrI.M.P.No.6770 of 2019 is dismissed. The substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on following conditions:

(i) the petitioner shall deposit 25% of the cheque amount before the trial Court to the credit of S.T.C.No.509 of 2017 on the file of the Judicial Magistrate (Fast Track Court-I), Erode, within eight

weeks from the date of receipt of a copy of this order. The amount can be deposited in instalments.

(ii) On such deposit, the Trial Court shall re-deposit the amount in a fixed deposit account in any nationalized bank so that the amount with interest can be disbursed either to the complainant or to the accused, depending upon the outcome of this revision petition.

(iii) After such deposit, the petitioner shall surrender before the trial Court and execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate (Fast Track Court-I) Erode.

(iv) the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Judicial Magistrate (Fast Track Court-I) Erode, may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iv) the petitioner shall appear before the trial Court on the first working day of every month until the disposal of the revision petition and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

Post the matter on 18.08.2019.

-sd/-
21/06/2019

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 SESSIONS
JUDGE, ERODE

2 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT-I, ERODE

3 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

WEB COPY

+1 C.C. to M/S.A.M.AMUTHA GANESH Advocate on payment of
necessary charges SR.NO. 12543

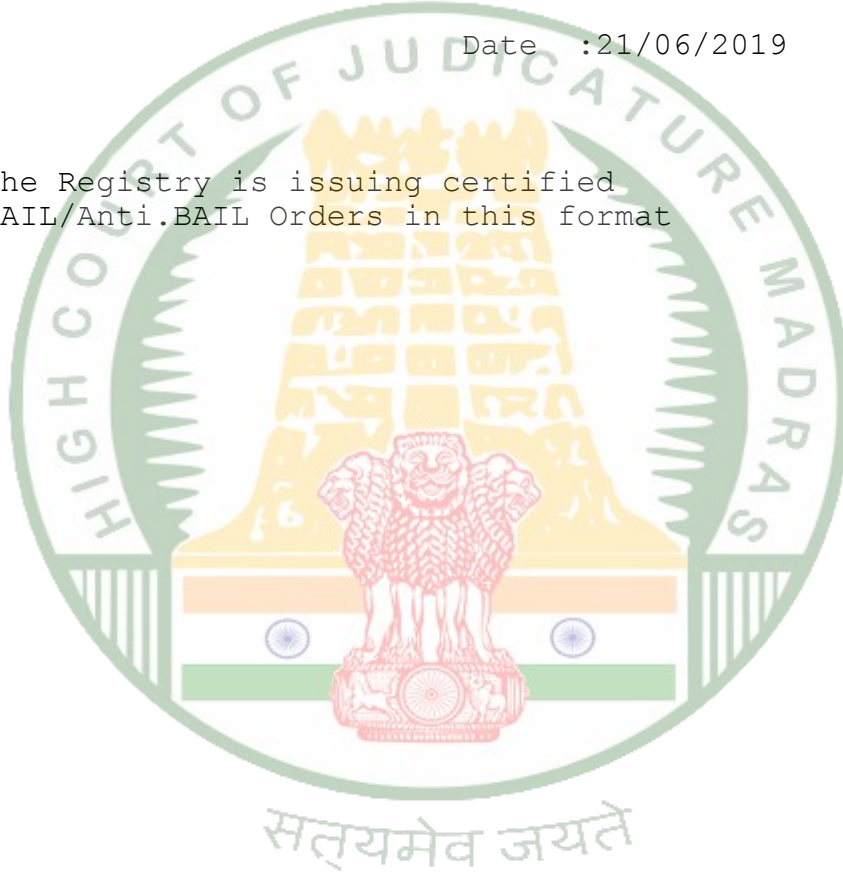
Order

in
CRL MP.6769 and 6770/2019

in
CRL RC.477/2019

Date :21/06/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 28/06/2019



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