

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eleventh day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.13167 of 2019

IN CRL.A.NO.535 OF 2019

1 ANNAMALAI

[PETITIONERS]

2 THOMAS

Vs

THE STATE REP BY ITS
THE INSPECTOR OF POLICE,
AVALURPETTAI POLICE STATION,
THIRUVANNAMALAI DISTRICT
(CR.NO.222/2010)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.535/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in S.C.No.145 of 2015 vide Judgment dated 17.06.2019 on the file of the learned Special Session Judge for SC and ST Cases, Villupuram and enlarge the petitioners on bail pending disposal of the above criminal appeal No.535/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.535/2019 on the file of the High Court and upon hearing the arguments of MR.SHANMUGA SUNDARAM SENIOR COUNSEL FOR M/S.OM SAI RAM Advocate for the petitioner and of PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

- 1.This Criminal Miscellaneous Petition has been filed by the Petitioners/A1 & A2 seeking suspension of sentence of imprisonment, imposed by the judgment, dated, 17.06.2019, made in S.C.No.145/2015, by the learned Special Sessions Judge, (SC/ST Cases), Villupuram, pending disposal of the Criminal Appeal.
2. This court heard the learned counsel on either side and also perused the materials placed on record.
3. In and by the impugned judgement, the Petitioners/A1 & A2 were convicted and sentenced as under:

S.No.	Conviction	Sentence
1.	Under Section 294(b) of IPC.	A fine of Rs.500/- each in default to undergo three months simple imprisonment each.
2.	Under Section 366 of IPC.	10 years Rigorous Imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo three months simple imprisonment.
3.	Under Section 342 of IPC.	A fine of Rs.1,000/- each in default to undergo three months simple imprisonment.
4.	U/s.3(1)(x) of SC/ST Act, 1989.	One year Rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo three months simple imprisonment.

The sentences were ordered to run concurrently. Aggrieved against the same, the petitioners have preferred this appeal.

4.The learned senior counsel Mr.R.Shanmugasundaram, appearing for Mr.Om Sai Ram, learned counsel for the Petitioners/A1 and A2 would submit that originally the charges were framed against the petitioners/A1 and A2 and 3 others, for the offences under Sections 147, 365, 342, 376, 323 of IPC read with Section 3(1)(x) of the Scheduled Caste and the Scheduled Tribes Act, 1989 and the Trial Court had acquitted the accused 3 to 5 and convicted the petitioners/A1 and A2. He would submit that the prosecution has failed to prove the charges against the petitioner beyond all reasonable doubt and that so far the charge under Section 366 is concerned mere finding that a woman was abducted is not enough and the prosecution has to further prove that the accused abducted the women with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the above purpose mentioned the accused cannot be held guilty and punished for the offence under Section 366 of IPC. In support of his contentions, the learned counsel would rely on the judgment of the Hon'ble Apex Court reported in **(2006) 5 SCC 740 Gabbu v. State of Madhya Pradesh**. He would further submit that there are other arguable points in the criminal revision and that the petitioners are in confinement from 17.06.2019 and that the criminal appeal is not likely to be taken for final hearing and prayed for suspension of sentence.

5. The respondent has filed a counter, wherein it had been stated that the Trial court has rightly convicted the accused only after scrutinizing the evidence of the prosecution witnesses and supporting documents and that if the sentence of the accused is suspended, there is every possibility the petitioners/A1 and A2 absconding and it will be very difficult to secure them.

6. The learned Additional Public Prosecutor has raised objections for grant of suspending the sentence, stating that the prosecution has proved the case beyond all reasonable doubt by letting in cogent evidence.

7. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the substantive sentence of imprisonment alone is suspended and the Petitioners/A1 & A2 are ordered to be enlarged on bail, on the following conditions:-

i. Each of the Petitioners/A1 & A2 shall execute a bond for a sum of Rs.25,000/- each (Rupees Twenty Five Thousand only), with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate Court, Gingee.

ii. The Petitioners/A1 and A2 shall report before the Trial court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

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-sd/-

11/11/2019

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.

सत्यमेव जयते

TO

1 THE SPECIAL SESSIONS JUDGE
SC/ST CASES]VILLUPURAM

2 THE JUDICIAL MAGISTRATE,
COURT, GINGEE

3 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM[FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE
<https://hcservices.ecourts.gov.in/hcservices/>

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6 THE STATE REP BY ITS
THE INSPECTOR OF POLICE,
AVALURPETTAI POLICE STATION,
THIRUVANNAMALAI DISTRICT

+1 C.C. to M/S.OM SAI RAM Advocate on payment of necessary
charges SR.NO. 23101

Order

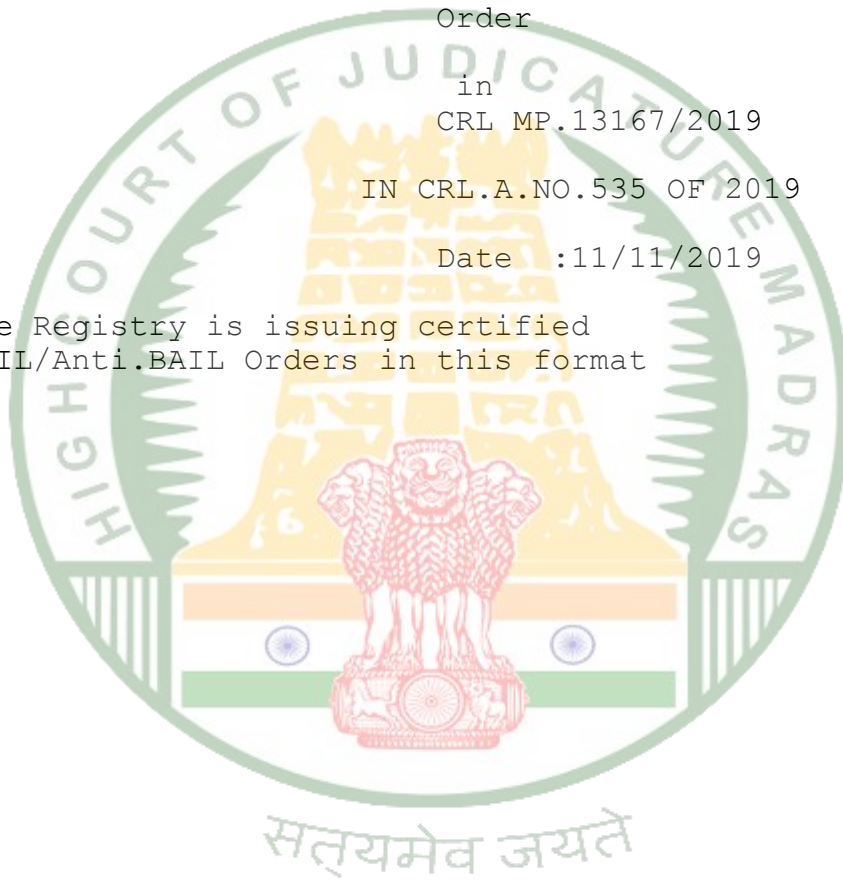
in

CRL MP.13167/2019

IN CRL.A.NO.535 OF 2019

Date :11/11/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 11/11/2019



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