

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Sixth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION Nos.15556 & 15555/2019

in Crl.R.C.No.1163 of 2019

K.KALIRAJ

[PETITIONER]

Vs

1 THE STATE

[RESPONDENT]

REP BY PUBLIC PROSECUTOR

2 L.T.M. ARUL MOZHI VARMAN,

PROPRIETOR, M/S. SRI MOOKAMBIGAI ENGINEERING ENTERPRISES,

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1163 of 2019 on the file of the High Court, the High Court will be pleased to

(i)suspend the sentence imposed on the petitioner in Crl.A.No.242/2017 dated 31/08/2018 by the I Additional District and Sessions Court, Coimbatore, pending disposal of the above Crl.R.C.No.1163 of 2019.(IN CRL.MP.Nos.15556 OF 2019)

(ii) exempt the petitioner from surrendering in pursuant to the judgement passed in Crl A No. 242/2017 dated 31/08/2018 by the I Additional District and Sessions court, Coimbatore, pending disposal of the above Crl.R.C.No.1163 of 2019.(IN CRL.MP.Nos.15555 OF 2019)

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.Revision Case No.1163 of 2019 on the file of the High Court and upon hearing the arguments of MR.S.B.VISWANATHAN, Advocate for the petitioner and of MR. M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

- 1.These Criminal Miscellaneous Petitions have been filed by the Petitioner/A3, seeking suspension of conviction and sentence of imprisonment, imposed vide judgment, dated 31.08.2018, made in Crl.A.No.242/2017, by the learned I Additional District and Sessions Judge, Coimbatore, modifying the judgment of conviction and sentence of imprisonment passed in C.C.No.136/2014, dated 21.07.2017, by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore and to exempt the Petitioner/A3, from surrendering before the Trial Court, dated 31.08.2018, made in

Crl.A.No.242/2017, by the I Additional District and Sessions Judge, Coimbatore, respectively, pending disposal of this Criminal Revision Case.

2.This court heard the submissions made by the learned counsel for the Petitioner/A3 and also perused both the impugned Judgments.

3.In and by the impugned judgement of the Trial Court, the Petitioner/A-3 was convicted for the offence under Sections 138 and 141 of the Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.4,17,600/- in default to undergo six months simple imprisonment. In and by the impugned Judgment of the Appellate Court, the Petitioner/A3 was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881, however, the sentence of imprisonment alone was reduced from one year simple imprisonment to three months simple imprisonment.

4.The learned counsel for the Petitioner/A-3 would submit that the cheque in question had been issued by the 1st accused/ Partnership Firm viz., M/s.Mallikarjuna Foundary and that the petitioner and one Govindaraj were partners in the Firm and that the petitioner had retired from the Partnership Firm on 30.05.2013 and the cheque had been presented for collection on 25.07.2013 and thereafter, a legal notice had been issued by the respondent/complainant on 06.08.2013 and that on receipt of legal notice, the petitioner had sent a reply on 19.08.2013, stating that he had retired from the Partnership Firm and and that the mother of the said Govindaraj, one Santhalakshmi was inducted as a partner in the Firm. The complainant being aware of that had purposely impleaded the petitioner as 3rd accused in this case. He would submit that the petitioner has also got other legal and arguable points in the Criminal Revision Case and that the revision petition is not likely to be taken for final hearing in the near future and that the Petitioner has got a fair chance of succeeding in the Criminal Revision Case and would pray that the substantive sentence imposed against the Petitioner/A-3 may be suspended on condition of depositing some amount.

5.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 Revision Case, the reliefs of exemption from surrender before the Court, suspension of sentence and bail are granted on the following conditions :-

- a) The Petitioner/A-3 shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) before the Trial Court, within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the Trial Court shall redeposit the said amount in a fixed deposit account in any nationalized bank, so that the amount accrues interest. The disbursal of this amount shall be decided at

the culmination of the revision petition. Thereafter, the Petitioner/A-3 is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore.

b) The Petitioner/A-3 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

c) The Petitioner/A-3 shall appear before the Trial Court at 10.30 a.m. 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 of Cr.PC. and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.

d) On the failure of the Petitioner/A-3, depositing the said amount, it is open to the Trial Court to commit the Petitioner/A-3 into custody for undergoing the sentence.

6. Post the matter on 04.12.2019 for "reporting compliance".

-sd/-

06/11/2019

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.

TO

1 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT AT MAGISTERIAL LEVEL-II,
COIMBATORE.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE. (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COIMBATORE.

+2 C.C. to S.B.VISWANATHAN Advocate on payment of necessary
charges Sr.Nos.22805 & 22806

Order

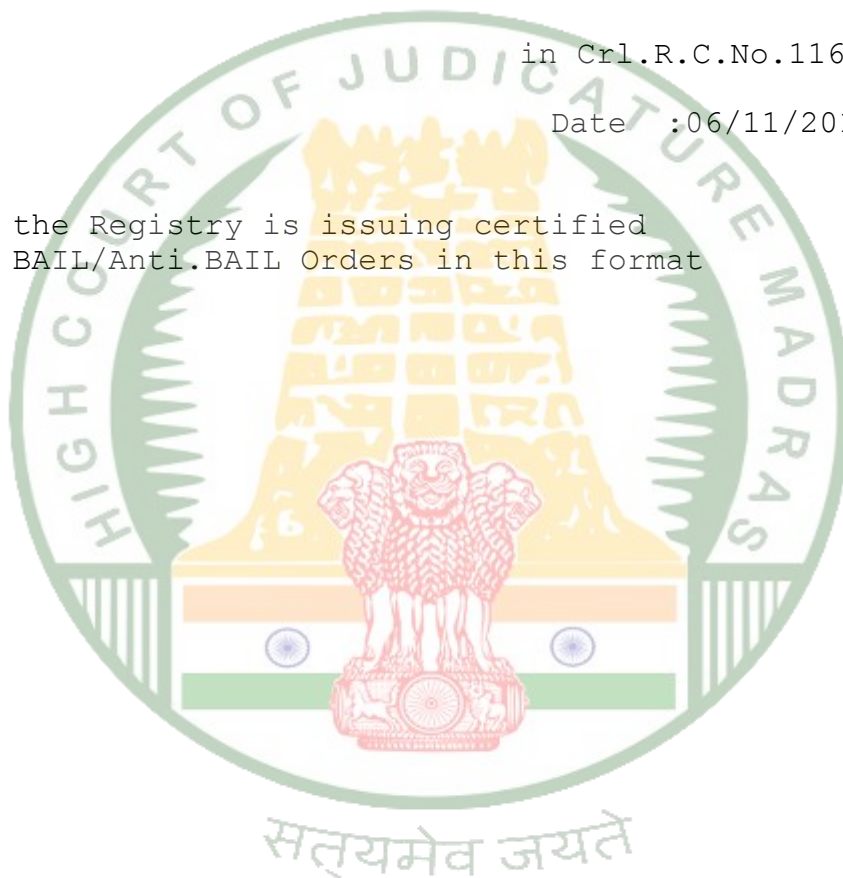
in
CRL MP.Nos.15556 & 15555/2019

in Crl.R.C.No.1163 of 2019

Date :06/11/2019

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

RVR 15/11/2019



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