

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Wednesday, the Thirteenth day of November Two Thousand Nineteen
PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH
and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN
CRIMINAL MISCELLANEOUS PETITION Nos.16429 and 16430 of 2019
IN CRL.A.No.375 OF 2019

BALU @ BALAMURUGAN PETITIONER(IN BOTH THE MPS)

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
PALLAPATTI POLICE STATION,
SALEM DISTRICT.
CR.NO.908/2013. RESPONDENT (IN BOTH THE MPS)

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.375 of 2019 on the file of the High Court, the High Court will be pleased to

(i)suspend the sentence of imprisonment alone imposed on the petitioner/Appellant/Accused herein by the Learned Sessions Judge, Mahila Court, Salem, Salem District on 22/04/2019 and enlarge him on bail pending the disposal of the above Crl.A.375/2019.(IN CRL.M.P.No.16429/2019)

(i)suspend the sentences of fine alone imposed on the Petitioner/ Appellant/Accused herein by the Learned Sessions Judge, Mahila Court, Salem, Salem District on 22/04/2019 and enlarge him on bail pending the disposal of the above Crl.Appeal No.375/2019.(IN CRL.M.P.No.16430/2019)

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.A.375 of 2019 on the file of the High Court and upon hearing the arguments of M/S. G.SARAVANAN, Advocate for the petitioner(IN BOTH THE MPS) and of MR. K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent (IN BOTH THE MPS) the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioner is the sole accused in S.C.No.351 of 2016 on the file of Sessions Judge, Mahila Court, Salem. The trial Court, by judgment dated 22.04.2019 convicted the petitioner for the offence punishable under Sections 341, 307 IPC and 4 of Tamil Nadu Prohibition of Harassment of Women Act and for the offence punishable under Section 341 IPC, sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/- in default to undergo one week simple imprisonment, for the offence under Section 307 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo six months simple imprisonment and for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, sentenced to undergo three year rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months simple imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner asked for sexual favours from P.W.2 (victim). As the petitioner was harassing her, she changed her residence. Enraged over the same, the petitioner went to the place of work of the victim and while she was returning, attacked her in the presence of P.W.4. P.W.1 is the husband of the victim, P.W.2 is the victim and P.W.4 is the co-worker. Taking note of the evidence of the eye witnesses, the trial Court convicted the petitioner for life.

3. The learned counsel appearing for the petitioner submits that the trial Court has not considered the evidence of P.W.7 to the effect that P.W.1 came to the spot ten minutes after the occurrence and after her phone call. Therefore, P.W.1 would not have been an eye witness. The evidence of P.W.1 with respect to the power failure has not been considered by the trial Court. P.W.2 has survived the attack. Therefore, even on the question of proportionality, the trial Court was not right. There are several mitigating circumstances available. The petitioner is under incarceration from 22.04.2019 onwards. Thus, the suspension of sentence will have to be granted.

4. The learned Additional Public Prosecutor appearing for the State submits that not only P.W.1 but P.W.4 is also an eye witness. The witnesses have spoken about the occurrence. P.W.2 is the injured witness. Therefore, the trial Court considered the aforesaid evidence while convicting the petitioner. Thus, this petition will have to be dismissed.

5. Admittedly, P.W.2 has survived the attack. The petitioner has been under incarceration from 22.04.2019 onwards. We are convinced that there are grounds sufficiently available to be agitated in the appeal.

6. Considering the above coupled with the period of incarceration of the petitioner, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes 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 Judicial Magistrate No.II, Salem and on further condition that the petitioner shall stay at Madurai and report before the Inspector of Police, Thallakulam Police Station, Madurai every day at 10.30 a.m. until further orders.

7.In view of the order passed in Crl.M.P.No.16429 of 2019 and taking note of the provisions of Section 357(2) Cr.P.C., the petition in Crl.M.P.No.16430 of 2019 stands ordered.

-sd/-

13/11/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.II, SALEM

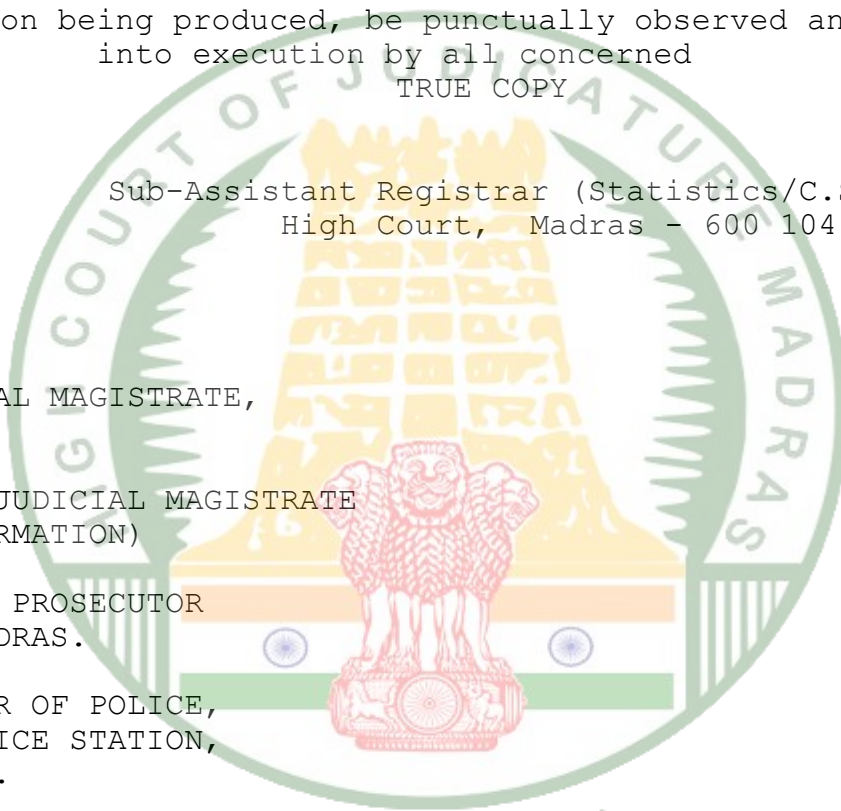
2 THE CHIEF JUDICIAL MAGISTRATE
SALEM(FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
PALLAPATTI POLICE STATION,
SALEM DISTRICT.

5 THE SESSIONS JUDGE,
MAHILA COURT,
SALEM.

6 THE INSPECTOR OF POLICE,
THALLAKULAM POLICE STATION,
MADURAI.



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7 THE SUPERINTENDENT,
CENTRAL PRISON SALEM,
SALEM DISTRICT.

+4 C.C. to M/S. G.SARAVANAN Advocate on payment of necessary
charges Sr.Nos.23370 & 23371

Order

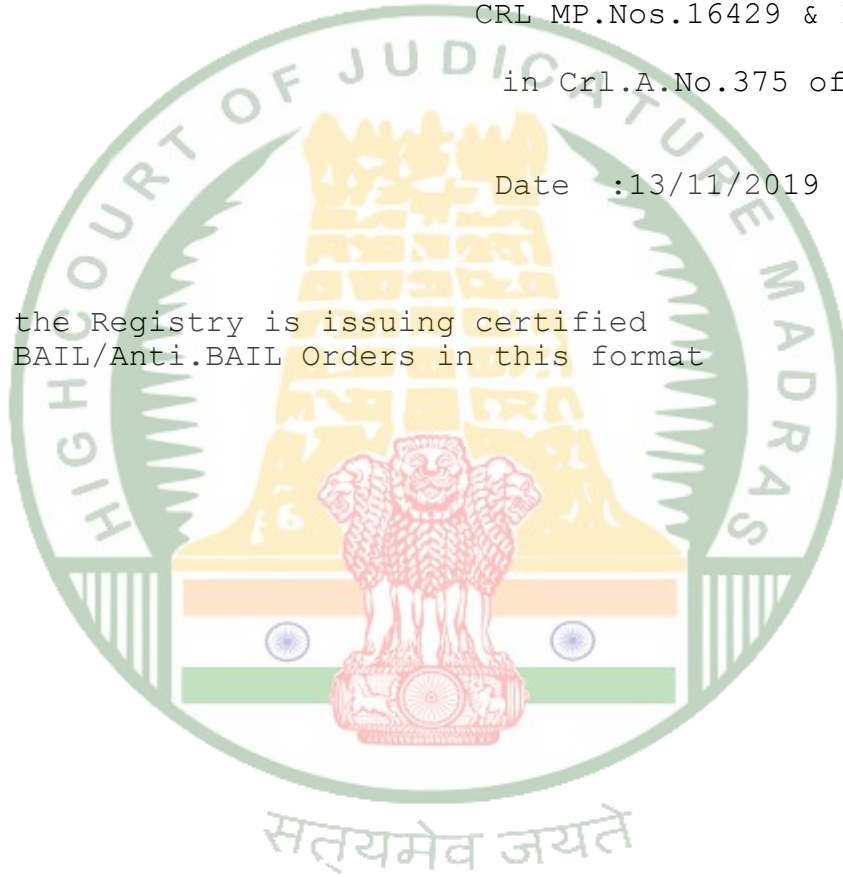
in
CRL MP.Nos.16429 & 16430/2019

in CrI.A.No.375 of 2019

Date :13/11/2019

From 7.2.2001 the Registry is issuing certified
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RVR 13/11/2019



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