

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eighteenth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.16769 & 16774 of 2019

IN CRL.RC.NO.1244 OF 2019

KINGSLY

[PETITIONER]

vs

K.RAGUPATHY

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1244/2019 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence passed in Criminal Appeal No. 72/2019 dated 17/09/2019 by the XV Additional Sessions court, Chennai and by modifying the order passed in C.C.NO.2482/2016 dated 29/01/2019 by the Metropolitan Magistrate Fast Track Court No. II ,Egmore at Allikulam, chennai and enlarge him on bail, pending disposal of criminal revision petition.[CRL.MP.NO.16769/2019]

[II]Exempt the petitioner from surrender before the trial court in criminal Appeal No.72/2019 dated 17.09.2019 by the XV Additional Sessions court, Chennai and by modifying the order passed in C.C.NO.2482/2016 dated 29/01/2019 by the Metropolitan Magistrate Fast Track Court No. II ,Egmore at Allikulam, chennai Pending disposal of criminal revision petition.[CRL.MP.NO.16774/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.1244/2019 on the file of the High Court and upon hearing the arguments of M/S.K.GANDHI KUMAR, Advocate for the petitioner the court made the following order:-

- 1.These Criminal Miscellaneous Petitions have been filed by the Petitioners/Accused, to suspend the sentence of imprisonment, imposed by the judgment, dated 29.01.2019 made in C.C.No.2482/2016, by the learned Metropolitan Magistrate, Fast Track-2, Egmore at Allikulam, as confirmed the judgment dated 17.09.2019, made in Crl.A.No.72/2019, by the learned XV Additional Sessions Court, Chennai and to exempt the Petitioner from surrendering before the Trial Court, dated 17.09.2019, made in Crl.A.No.72/2019, by the learned XV Additional Sessions Judge,

Chennai, respectively, pending disposal of the Criminal Revision Case.

2. This court heard the submissions made by the learned counsel for the Petitioner and also perused both the impugned Judgments.
3. In and by both the impugned judgements of the Trial Court and the Appellate Court, found that the petitioner is guilty for offences under Section 138 of the Negotiable Instruments Act. The trial Court sentenced him to undergo one year Simple Imprisonment and also to pay Rs.46,00,000/- which was twice the amount of the cheque as compensation and in default to undergo Simple imprisonment for three months. Against which, the petitioner had preferred an appeal and the appellate Court while confirming the conviction modified the sentence to six months simple imprisonment and to pay compensation of Rs.23,00,000/- to the complainant, in default, to undergo Simple imprisonment for one month. Against which, the present revision petition is filed.
4. The learned counsel for the petitioner would submit that two cheques are involved in this case, one is for Rs.17,00,000/- and another one for Rs.6,00,000/-. He would further submit that during the pendency of the appeal, the petitioner had deposited a sum of Rs.9,20,000/- before the trial Court. The learned counsel would submit that the trial Court as well as the lower Appellate Court have failed to consider that the respondent/complainant has not proved that he has paid the entire agreed amount of Rs.90,00,000/- to the petitioner. On the other hand, the petitioner/accused had proved by defence, by giving details that the respondent/complainant has paid only an amount of Rs.67,50,000/- during the period of agreement. The Courts below failed to take into consideration that there was no existing legally enforceable debt at the relevant time.
5. The learned counsel for the petitioner would submit that there are other arguable points in this case and that the petitioner without prejudice to his contention, is prepared to deposit the balance amount, out of the 50% of the cheque amount which will work out to Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand only) (Rs.11,50,000 - Rs.9,20,000).
6. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, 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 surrendering before the Trial Court, suspension of sentence and bail are granted on the following conditions :-
 - a) The Petitioner/Accused shall deposit a sum of Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand Only), which is the balance amount of Rs.11,50,000/- which is 50% of the cheque amount, 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 disbursement of this amount shall be decided at the culmination of the revision petition. Thereafter, the Petitioner/Accused

is ordered to be released on bail, on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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 Metropolitan Magistrate, Fast Track Court No.II, Egmore at Allikulam, Chennai.

- b) The Petitioner/Accused 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/Accused 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/Accused, depositing the said amount, it is open to the Trial Court, to commit the Petitioner/Accused into the custody for undergoing the sentence.

Post the matter on 16.12.2019 for "reporting compliance".

-sd/-

18/11/2019

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.

WEB COPY

TO

1 THE METROPOLITAN MAGISTRATE,
FTC, NO.II, EGMORE AT ALLIKULAM, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

3 THE XV ADDITIONAL SESSIONS
COURT CHENNAI

C.C. to M/S.K.GANDHI KUMAR Advocate on payment of necessary charges

Order

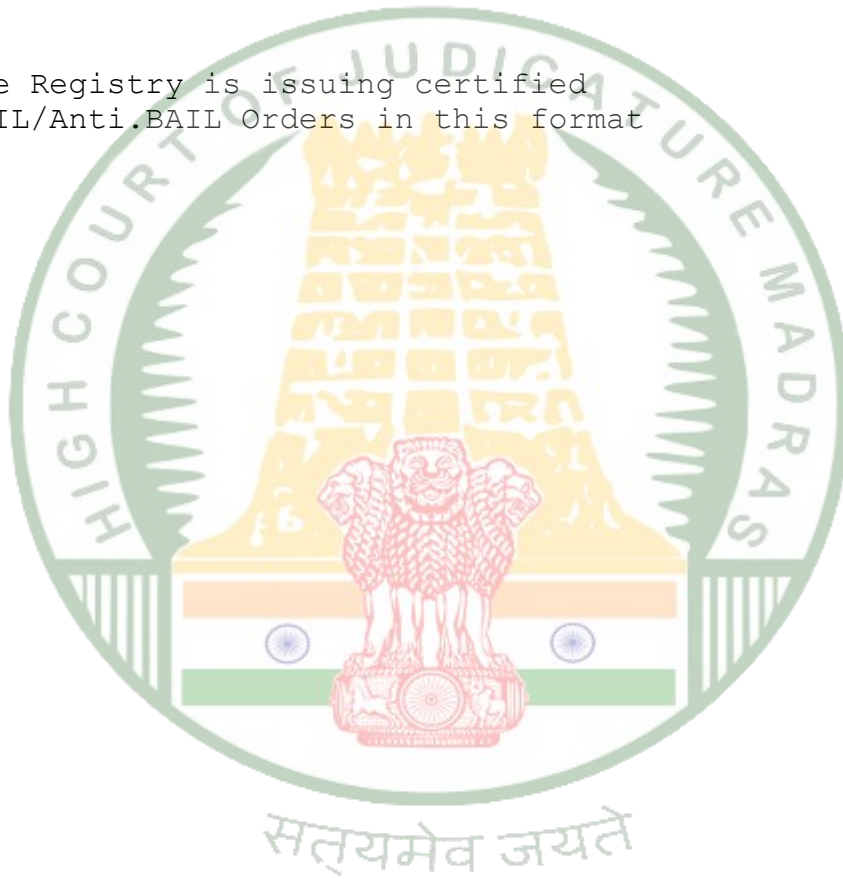
in

CRL MP.16769 & 16774/2019

IN CRL.RC.NO.1244 OF 2019

Date :18/11/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
RD 18/11/2019



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