

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifteenth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.16639 & 16643 of 2019

IN CRL.R.C.NO.1242 of 2019

R.SUMAN

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 P.RAVI
POWER AGENT
K.PRAKASH,

[RESPONDENTS IN BOTH THE PETITIONS]

2 THE PUBLIC PROSECUTOR
NAMAKKAL DISTRICT.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence of imprisonment imposed in the judgment dated 09.08.2017 made in STC No.218/2016 on the file of the Judicial Magistrate (FTC), Thiruchengode, which was confirmed in the judgment dated 05.07.2019, made in C.A.No.56/2017 on the file of the Principal Sessions Judge, Namakkal and enlarge the petitioner on bail pending disposal of the above Crl.R.C.No.1242 of 2019.
(Crl.M.P.No.16639 of 2019)

(ii) To grant an order of exemption from surrendering before the trial court in pursuance to the judgment dated 05.07.2019 made in C.A.No.56/2017 on the file of the Principal Sessions Judge, Namakkal confirming the conviction imposed in the judgment dated 09.08.2017 made in S.T.C.No.218 of 2016 on the file of the Judicial Magistrate (FTC), Thiruchengode, pending disposal of the above Crl.R.C.No.1242 of 2019. (Crl.M.P.No.16643 of 2019)

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.M.GURUPRASAD, Advocate for the petitioner, [IN BOTH THE PETITIONS] the court made the following order:-

These Criminal Miscellaneous Petitions have been filed by the Petitioners/Accused, to suspend the sentence of imprisonment, imposed by the judgment, dated 09.08.2017 made in STC.No.218/2016, by the Judicial Magistrate, Fast Track Court, Thiruchengode, as confirmed the judgment dated 05.07.2019, made in Crl.A.No.56/2017, by the Principal Sessions Judge, Namakkal and to exempt the Petitioner from surrendering before the Trial Court, dated 05.07.2019, made in Crl.A.No.56/2017, by the Principal Sessions Judge, Namakkal, respectively, pending disposal of the Criminal Revision Case.

- 1.This court heard the submissions made by the learned counsel for the Petitioner and also perused both the impugned Judgments.
- 2.In and by both the impugned judgements of the Trial Court and the Appellate Court, the Petitioner/Accused, was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo Sixteen Months Simple Imprisonment and to pay a fine of Rs.5,000/- [Rupees Five Thousand Only] in default to undergo One Month Simple Imprisonment.
- 3.The learned counsel for the Petitioner/Accused, would submit that the cheque had been given in respect of yet another transaction and would submit that one Thangavel, who is the benami of the respondent/complainant viz., P.Ravi, entered into an agreement of sale on 30.12.2009, the said document have been executed by the father of the petitioner/accused as Power of Attorney in favour of the respondent/complainant. Further, in respect of a loan transaction an agreement of sale had been created and that to prove that the cheque was given for a different purpose, the petitioner had also let in evidence by way of additional evidence, during the pendency of the appeal. The petitioner had rebutted the presumptions against him by letting in additional evidence and proved his case by preponderance of probability whereas the Appellate court failed to take note of it. He would submit that there are arguable points available 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/Accused may be suspended on condition of depositing some amount. He would submit that without prejudice to the contentions, the Petitioner/Accused is prepared to deposit 30% of the cheque amount.
- 4.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.5,10,000/- (Rupees Five Lakhs Ten Thousand Only), which is 30% of the cheque amount, viz., Rs.17,00,000/- 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/Accused 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, Thiruchengode.

- 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 13.12.2019 for "reporting compliance".

-sd/-
15/11/2019

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

सत्यमेव जयते
TRUE COPY

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

TO

1 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT,
THIRUCHENGODE,

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL. [FOR INFORMATION]

3 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL

4 THE PUBLIC PROSECUTOR
NAMAKKAL DISTRICT.

+1 C.C. to M/S.M.GURUPRASAD Advocate on payment of necessary
charges SR.NO.23632

Order

in

CRL MP.16639 & 16643/2019

in

CRL.R.C.NO.1242/2019

Date :15/11/2019

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copies of the BAIL/Anti.BAIL Orders in this format

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