

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Sixth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION No.2491 & 2492 of 2020

IN CRL.R.C.NO.330 of 2020

K.SHANMUGASUNDARAM [PETITIONER IN BOTH THE PETITIONS]

Vs

M.VISWANATHAN [RESPONDENT IN BOTH THE PETITIONS]

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 judgment dated 20.07.2019 made in C.A.No.65/2018 on the file of the II Additional District and Sessions Judge, Erode which was confirmed in the judgment dated 31.01.2018 made in STC No.57/2012 on the file of the Judicial Magistrate FTC-II, Erode and enlarge the petitioner on bail pending disposal of the above Crl.R.C.NO.330 of 2020. (Crl.M.P.No.2491/2020)

(ii) To grant an order of exemption from surrendering before the trial court in pursuance to the order dated 20.07.2019 made in C.A.No.65/2018 on the file of the II Additional District and Sessions Judge, Erode which was confirmed in the judgment dated 31.01.2018 made in STC No.57/2012 on the file of the Judicial Magistrate FTC-II, Erode and enlarge the petitioner on bail pending disposal of the above Crl.R.C.NO.330 of 2020. (Crl.M.P.No.2492/2020)

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, and of M/S.M.SUNVIKRAM, Advocate on behalf of the Respondent, the court made the following order:-

By judgement, dated 31.01.2018 passed by the learned Judicial Magistrate, Fast Track Court No.2, Erode, in S.T.C.No.57 of 2012, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of one year and further directed to pay a

fine of Rs.5,000/-, in default, to undergo simple imprisonment for a further period of three months. Challenging the said conviction and sentence, the petitioner has preferred an appeal in CrI.A.No.65 of 2018 before the learned II Additional District and Sessions Judge, Erode, in which, the Appellate Court dismissed the Appeal and confirmed the judgement of the trial court. Aggrieved over the same, the petitioner has filed the present Criminal Revision Case. He also filed two Miscellaneous Petitions seeking suspension of sentence and exemption from surrendering before the trial Court, pending disposal of this Criminal Revision.

2. According to the learned counsel for the Petitioner, there are copious materials on record to prove that there is no legally enforceable debt and the petitioner has rebutted the presumption contemplated under Section 139 of the Negotiable Instruments Act. He further submitted that there are arguable points available in the Criminal Revision Case, which is not likely to be taken up for final hearing in the near future and hence, the substantive sentence imposed against the petitioner may be suspended and the petitioner may be exempted from surrendering before the Trial Court.

3. Heard the learned counsel for the petitioner and also perused the materials placed on record.

4. At this juncture, it is relevant to point out that the Supreme Court, in *Bihari Prasad Singh v. State of Bihar* and another [2000 SCC (CrI) 1380], was of the view that while seeking the relief of suspension of sentence, the accused need not necessarily be under confinement. In *Ibrahim v. State of Kerala* [1979 KLT 857], it was held that for grant of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the powers contemplated under Section 397(1)Cr.P.C., as the said provision itself is very unequivocal and unambiguous.

5. In the light of the aforesaid legal propositions and considering the facts and circumstances of the case and also taking note of 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 subject to certain conditions. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of exemption from surrender 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.1,00,000/- (Rupees one lakh only) (50% of the cheque amount) before the Trial Court, within four weeks from the date of receipt of a copy of this order;
- b) On such deposit being made, the Trial Court shall redeposit the said amount in a Fixed Deposit Account, in any one of the Nationalized Banks, renewable thereafter periodically. The disbursement of this amount shall be decided at the

culmination of the Criminal Revision Case.

- c) 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 of whom, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate, Fast Track Court No.II, Erode;
- d) The Petitioner/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.
- e) The Petitioner/Accused shall appear before the Trial Court at 10.30 a.m. on the first working day of every English Calendar Month, until the disposal of the revision case and if he is not able to appear before the Trial Court on any day, due to unavoidable circumstances, 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 his absence, as directed by the Trial Court. Such an application shall not be entertained often.

On the failure of the Petitioner/Accused, depositing the said amount, it is open to the Trial Court to commit the Petitioner/Accused into custody for undergoing the sentence.

-sd/-

26/02/2020

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

TRUE COPY

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

TO

1 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT, NO.2, ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

3 THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, ERODE.

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+1 C.C. to M/S.M.GURUPRASAD Advocate on payment of necessary charges SR.NO.4011

Order

in
CRL MP.2491 & 2492/2020
in
CRL.R.C.NO.330/2020

Date :26/02/2020

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

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