

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Tuesday, the Twenty First day of January Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION Nos.490 & 493 of 2020

IN CRL.RC.NO.90 OF 2020

G.S.UMA MAHESWARI

[ PETITIONER / APPELLANT ]

Vs

R.KALIMUTHU

[ RESPONDENT / RESPONDENT ]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.90/2020 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence of imprisonment imposed in the judgment dated 19.12.2019 made in C.A.No.21 of 2019 on the file of the Learned III Additional District Sessions Court, Erode at Gobichettipalayam, confirming the conviction imposed in judgment dated 01.07.2019 made in S.T.C.No.4764 of 2014 on the file of the Learned Judicial Magistrate Court No.I, Gobichettipalayam, pending disposal of the above Crl.RC.No.90/2020. [IN CRL.MP.NO.490/2020]

[ii] grant an order of exemption from surrendering before the trial Court in pursuance to the judgment dated 19.12.2019 made in C.A.No.21 of 2019 on the file of the Learned III Additional District Sessions Court, Erode at Gobichettipalayam, confirming the conviction imposed in judgment dated 01.07.2019 made in S.T.C.No.4764 of 2014 on the file of the Learned Judicial Magistrate Court No.I, Gobichettipalayam, pending disposal of the above Crl.RC.No.90/2020. [IN CRL.MP.NO.493/2020]

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.RC.No.90/2020 on the file of the High Court and upon hearing the arguments of M/S. M.GURUPRASAD, Advocate for the petitioner the court made the following order:-

By judgment dated 01.07.2019 passed by the learned Judicial Magistrate No.1, Gobichettipalayam in S.T.C.No.4764 of 2014, the petitioner was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and to pay a sum of Rs.4,50,000/- as compensation.

2.Challenging the said conviction and sentence, the petitioner has preferred an appeal in CrI.A.No.21 of 2019 before the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam and the Lower Appellate Court dismissed the Appeal and confirmed the judgment of the trial court. Aggrieved over the same, the petitioner has filed the present Criminal Revision Case. She also filed two Miscellaneous Petitions seeking suspension of sentence and exemption from surrendering before the trial Court, pending disposal of this Criminal Revision.

3.The learned counsel for the petitioner has submitted that the Courts below have failed to consider the fact that the petitioner denied issuance of a cheque leaf and promissory note. 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.

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

5.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.

6.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.2,00,000/- (Rupees Two Lakhs only) before the Trial Court, within three 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 disbursal 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 her 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 Court No.1, Gobichettipalayam;
- 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 she is not able to appear before the Trial Court on any day, due to unavoidable circumstances, she 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 her absence, as directed by the Trial Court. Such an application shall not be entertained often.
- f) 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/-

21/01/2020

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.

WEB COPY

TO

1 THE III ADDITIONAL DISTRICT SESSIONS COURT,  
ERODE AT GOBICHETTIPALAYAM.

2 THE JUDICIAL MAGISTRATE COURT NO.I,  
GOBICHETTIPALAYAM.

3 THE CHIEF JUDICIAL MAGISTRATE  
ERODE [FOR INFORMATION]

+1 C.C. to M/S. M.GURUPRASAD Advocate on payment of necessary  
charges SR.No.1133

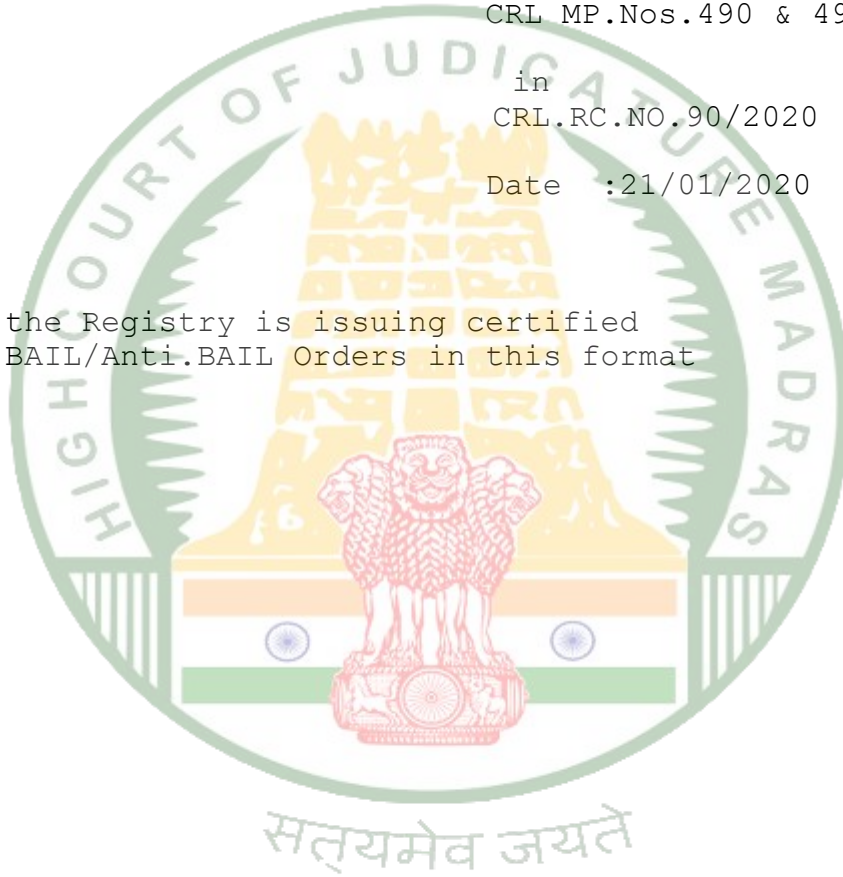
Order

in  
CRL MP.Nos.490 & 493/2020

in  
CRL.RC.NO.90/2020

Date :21/01/2020

From 7.2.2001 the Registry is issuing certified  
copies of the BAIL/Anti.BAIL Orders in this format  
cs 23/01/2020



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