

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twentieth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION Nos.1517 & 1518 of 2020

IN CRL.R.C.No.210 OF 2020

PRABHAKARAN

[PETITIONER/APELLANT]

Vs

STATE REP. BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
KODUMUDI POLICE STATION,
ERODE DISTRICT,
CRIME NO.211/2010.

Petitions praying that in the circumstances stated therein the High Court will be pleased to

(i)suspend the sentence imposed by the Honourable I Additional District and Sessions Judge, Erode in Criminal Appeal No.183 of 2018, dated 17.12.2019 confirming the judgment made in CC 38/2011 dated 24.5.18 - District Munsif Cum Judicial Magistrate, Kodumudi, pending disposal of Crl.RC.No.210 of 2020.(IN CRL.M.P.No.1517 OF 2020)

(ii) grant exemption from surrendering before the trial court in pursuance to the judgment dated 17.12.2019 made in Criminal Appeal No.183 of 2018 on the file of Learned I Additional District and Sessions Court, Erode, confirming the Judgment imposed in C.C.No. 38 of 2011, dated 24.5.18 - District Munsif Cum Judicial Magistrate, Kodumudi, pending disposal of Crl.RC.No.210 of 2020.(IN CRL.M.P.No.1518 OF 2020)

Order : These petitions coming on for orders upon perusing the petitions and upon hearing the arguments of M/S. P.KANNAN KUMAR, Advocate for the petitioner and of MR. K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

By judgement, dated 24.05.2018 passed by the learned District Munsif-cum-Judicial Magistrate, Kodumudi, in C.C.No.38 of 2011, the petitioner was convicted for the offences under Sections 279, 337 (4 counts), 338 (4 counts) and 304(A) IPC and was sentenced to undergo simple imprisonment for a period of one year and also imposed a fine of Rs.2,000/-, in default to undergo further simple imprisonment for a period of one month for the offence under section 304A IPC; sentenced to impose a fine of Rs.500/- each, in default to undergo simple imprisonment for a period of one month each in respect of the

offence under Section 337 (4 counts) IPC; sentenced to impose a fine of Rs.1000/- each, in default to undergo simple imprisonment for a period of one month each in respect of the offence under Section 338 (4 counts) IPC. However, no separate sentence was imposed on the petitioner/accused for the offence under Section 279 IPC. Challenging the said conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.183 of 2018 before the learned I Additional District and Sessions Judge, Erode. By judgment dated 17.12.2019, the 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. 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.It is submitted by the learned counsel for the petitioner / accused that the amount of fine had already been paid, as directed by the appellate Court in its judgment. The learned counsel further submitted that there are several infirmities and inconsistencies in the prosecution case and there are also contradictions in material particulars in the evidence of the prosecution. The learned counsel also submitted that there are arguable points available in this Criminal Revision, 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 Additional Public Prosecutor on the submissions made by the learned counsel for petitioner.

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 (Crl) 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 is directed to execute 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 learned District Munsif cum-Judicial Magistrate, Kodumudi;

- 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 English Calender 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.
- d) On the failure of the Petitioner/Accused in complying with the aforesaid conditions, it is open to the Trial Court to commit the Petitioner/ Accused into custody for undergoing the sentence.

-sd/-
20/02/2020

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.

TO

1 THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, KODUMUDI

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KODUMUDI POLICE STATION,
ERODE DISTRICT,

5 I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, ERODE.

C.C. to M/S. P.KANNAN KUMAR Advocate on payment of necessary
charges SR.3429

Order

in
CRL MP.Nos.1517 & 1518 of 2020

IN CRL.R.C.No.210 OF 2020

Date :20/02/2020

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

RVR 27/02/2020