

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP Nos. 4189 and 8116 of 2020

in Crl.A Nos. 679 and 699 of 2019

Hari @ Harikrishnan ... Petitioner in
Crl.M.P.No.4189 of 2020

Jayabharathi @ Bharathi @ Jeba ... Petitioner in
Crl.M.P.No.8116 of 2020

vs

State, Represented by ... Respondent in both cases
The Inspector of Police,
D-5, Marina Police Station,
Chennai District.
(Cr.No.2322 of 2014)

Petitions filed under Section 389(1) of Cr PC to suspend the sentence imposed in S.C.No. 171 of 2015 dated 26.08.2019 on the file of VI Additional Sessions Judge, Chennai pending disposal of the appeal.

For Petitioner .. Mr.Chakravarthy
in Crl.M.P.No.4189 of 2020
Mr.Rajkumar
in Crl.M.P.No.8116 of 2020

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor
in both cases

COMMON ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner in Crl.M.P.No.4189 of 2020 has been arrayed as A2 and the petitioner in Crl.M.P.No.8116 of 2020 has been arrayed as A1 in S.C.No. 171 of 2015 on the file of VI Additional Sessions Judge, Chennai. By judgment dated 26.08.2019, A1 and A2 were convicted for the offence punishable under Sections 302 r/w 34, 302 and 506(ii) IPC respectively and for the offence punishable under Section 302 r/w 34 IPC, A1 was sentenced to

undergo life imprisonment and for the offence punishable under Section 302 IPC, A2 was sentenced to undergo life imprisonment and for the offence punishable under Section 506(ii) IPC, A2 was sentenced to undergo five years rigorous imprisonment. Seeking suspension of sentence, the present petitions have been filed.

2.The case of the prosecution is that the deceased was the wife of A1. Theirs is a love marriage. In view of the differences between them, A1 left him and started living with A2, as deposed by P.Ws 12 to 14.

3.On the date of occurrence, A1 called the deceased to the Marina Beach in the night time at about 7.15 p.m. A2 and A4 attacked the deceased and committed the offence. A3 and A4 were juveniles and therefore, they were proceeded separately under the Juvenile Justice Act. Upon conclusion of the trial, they were accordingly found guilty in J.C.No. 320 of 2015. The trial Court also convicted the petitioners. Seeking suspension of sentence, these petitions have been field.

4.Learned counsel appearing for the petitioners submitted that the eye witness, namely, P.W.3 and 4 would not have been present in the place of occurrence. They have stated that the place was dark and it was difficult to see the faces. No Test Identification Parade has been done. The evidence of other witnesses, namely, P.Ws 1 and 7 among others cannot be believed. P.W.1 has not stated that only in pursuant to her identification, the accused were arrested. On the contrary, she has stated that she found the petitioners under the police custody on 02.10.2014 whereas the arrest was on 04.10.2014. Therefore, the arrest and recovery cannot be believed. The petitioners are under incarceration from 26.08.2019 onwards. Now, nearly one year and four months is over. Thus, the sentence will have to be suspended.

5.Learned Additional Public Prosecutor appearing for the State submitted that in this case A2 came along with A3 and A4 as asked by A1 and therefore, the offence was committed consciously. P.Ws 3 and 4 are the eye witnesses. Thus, even if the recovery goes, their evidence will have to be taken into consideration as done by the trial Court. There is no need for Test Identification Parade since it is only a part of the investigation. Therefore, the petitions required to be dismissed.

6.We do find that there are arguable points available in the appeal to be agitated apart from the fact that the petitioners are under incarceration for nearly one year and four months as of now. From the submissions made, a doubt lingers over the arrest and recovery. P.Ws 3 and 4 have stated that they saw the occurrence from a distance during night time. The occurrence happened at the Beach during night time. It is their further evidence that they could not see the faces correctly. Therefore, these aspects will have to be seen in depth during the hearing of the appeals. Suffice it is to state that the other points

available for consideration at the time of hearing the appeals. Thus, in the light of the above and taking into consideration the period of incarceration, we are inclined to suspend the sentence.

7. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of VI Additional Sessions Judge, Chennai (Crl.M.P.No.4189 of 2020) and II Metropolitan Magistrate, Egmore, Chennai (Crl.M.P.No.8116 of 2020) and on further condition that they shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
22/12/2020

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 VI ADDITIONAL SESSIONS JUDGE,
CHENNAI.

2 THE II METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI.

3 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
D-5 MARINA POLICE STATION,
CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI,
CHENNAI.

7 THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN,
PUZHAI, CHENNAI.

+1 C.C. to M/S.R.CHAKKARAVARTHY Advocate on payment of
necessary charges SR.NO.8548

+1 CC to MR.RAJKUMAR, Advocate on payment of necessary
charges SR.NO.8541

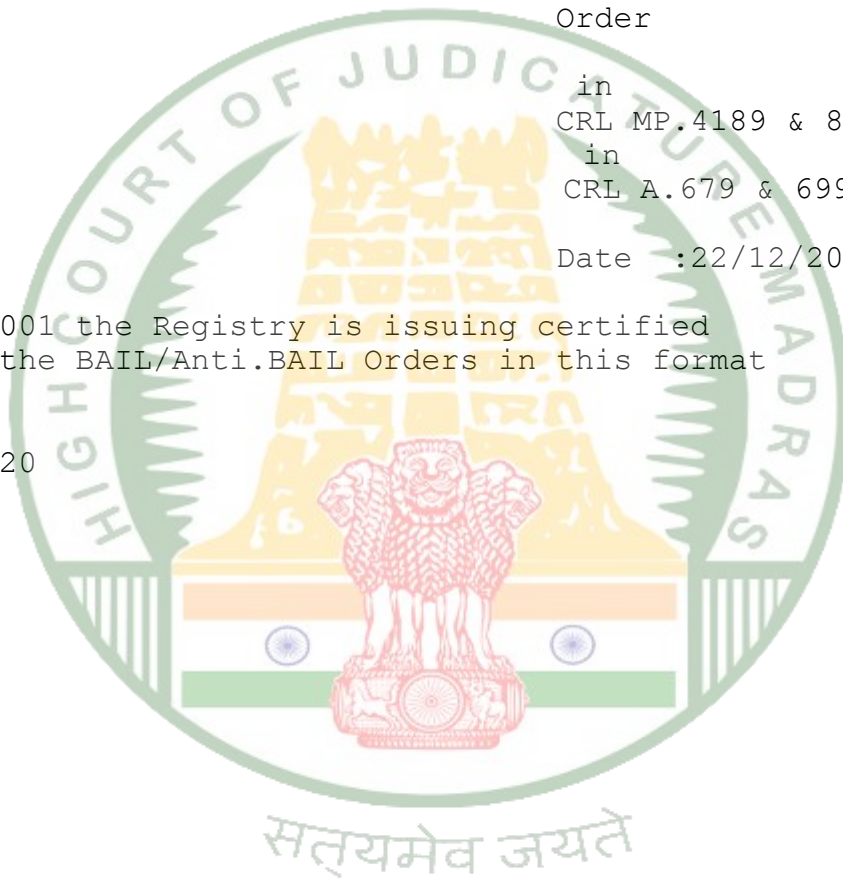
Order

in
CRL MP.4189 & 8116/2020
in
CRL A.679 & 699/2019

Date :22/12/2020

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TA-23/12/2020



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