

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.08.2020

DELIVERED ON: 21.08.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.M.P. No.4523 of 2020 in Crl.R.C. No.593 of 2020

Amutha

Petitioner

vs.

State represented by
the Inspector of Police
Rasipuram Police Station
Namakkal District
(Cr. No.741 of 2012)

Respondent

Criminal Miscellaneous Petition filed under Section 397 read with 401 Cr.P.C., seeking to suspend the sentence of conviction imposed against the petitioner vide judgment and order dated 01.11.2019 passed in S.C. No.15 of 2013 on the file of the Additional Assistant Sessions Court, Rasipuram and confirmed by the Principal Sessions Court, Namakkal in Crl.A. No.76 of 2019 vide judgment and order dated 15.06.2020 and enlarge her on bail.

For petitioner Mr. G. Anbuchezeiyan

For respondent Mr. K. Mahdan
Govt. Advocate (Crl. Side)

सत्यमेव जयते

ORDER

This is a petition for suspension of sentence and bail.

2 It is the case of the prosecution that on 20.08.2012, around 5.00 p.m., the petitioner, who was known to Mangayarkarasi (P.W.1), came to the latter's house on the pretext of watching television and after gaining entry thus, she attacked Mangayarkarasi (P.W.1) with a stick and knife, caused injuries to her, forcibly snatched the 6 ½ sovereign gold chain and left the house bolting the door from outside; after the attack, Mangayarkarasi (P.W.1) was in a state of shock and when she regained her self, she made a hue and cry and the front door was opened by her neighbour.

3 On these allegations, the police registered a case in Rasipuram P.S. Cr. No.741 of 2012 under Sections 451 and 394 read with 397 IPC and prosecuted the petitioner in S.C. No.15 of 2013 before the Additional Assistant Sessions Judge, Rasipuram, in which, the petitioner was convicted and sentenced as follows on 01.11.2019.

Provision of law under which convicted	Sentence
S.394 read with 397 IPC	Rigorous imprisonment for 7 years and fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of 6 months
S.451 IPC	Simple imprisonment for 2 years and fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 2 months

4 Challenging the aforesaid conviction and sentences, the petitioner filed Crl.A. No.76 of 2019 which has been dismissed by the Principal Sessions Court, Namakkal, vide judgment and order dated 15.06.2020, aggrieved by which, the petitioner has preferred Crl.R.C. No.593 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

5 Heard Mr. G. Anbuechezhiyan, learned counsel for the petitioner and Mr.K. Madhan, learned Government Advocate (Crl. Side) appearing for the respondent.

6 The learned counsel for the petitioner took this Court through the evidence of Mangayarkarasi (P.W.1) and submitted that the petitioner was a tenant under Mangayarkarasi (P.W.1); Mangayarkarasi (P.W.1) wanted her (the petitioner) to vacate the house; since the petitioner resisted, a dispute arose between them and in order to forcibly have her (the petitioner) evicted, Mangayarkarasi (P.W.1) enacted a drama. He further submitted that Mangayarkarasi (P.W.1) was treated for the injuries suffered by her not in the Government Hospital, but, by Dr. Vijayakumar (P.W.9) in a private hospital and that Dr. Vijayakumar (P.W.9) knows Dr.Sampathkumar (P.W.3), who is the son of Mangayarkarasi (P.W.1) and in order to oblige his friend Dr. Sampathkumar (P.W.3), Dr. Vijayakumar (P.W.9) issued a false medical certificate. It is his further submission that Mangayarkarasi (P.W.1), in her cross-examination, has stated that the police came to the place of occurrence around 6.30 p.m on the same day, whereas, the Investigating Officer (P.W.12), has stated in his evidence that he went to the place of occurrence only at 10 p.m. and thus, there is a contradiction in their testimonies.

7 Per contra, the learned Government Advocate (Crl. Side) refuted the aforesaid contentions.

8 This Court gave its anxious consideration to the rival submissions.

9 This Court gave a cursory reading of the evidence of Mangayarkarasi (P.W.1), who has stated that the petitioner, who was known to her, came to her house saying that the television set in her house was not working and picked up a conversation; once inside the house, the petitioner threw chilli powder on her (P.W.1's) face and attacked her with a stick, caused injuries to her and snatched her thali kodi chain. Mangayarkarasi (P.W.1) has denied the suggestion that the case was foisted as she wanted to evict the petitioner from the house. Dr.Vijayakumar (P.W.9), who examined her (P.W.1), has made the following entry in the accident register copy (Ex.P.4).

"Alleged assault by one known female person at 20.08.2012 at 5.30 p.m. by using koduval, கட்டை, தலையணை மற்றும் மிளகாய்துள்...

1. lacerated wounds of size ranging from 5 cms. x 1 cm x bone deep to 3 cms x 1 cm x bone deep at 6 places in scalp.
2. contusion with abrasion 8 x 5 cm over right fore arm
3. Abrasion size 1 x 1 cm over left ring finger."

10 Be it noted that law does not mandate that the victim of a crime should go only to the Government Hospital and not to a private hospital. In fact, a circular has been issued to all the private hospitals to give immediate medical care to victims of crimes and not make them run from pillar to post. Just because Dr. Vijayakumar (P.W.9) had stated in the cross-examination that he knows Dr. Sampathkumar (P.W.3), son of Mangayarkarasi (P.W.1), one cannot infer that the medical records were fabricated. In fact, the police had recovered the bloodstained wooden stick (M.O.2), bloodstained pillow (M.O.3), bloodstained knife (M.O.4) and chilli powder (M.O.5) from the place of occurrence.

11 As regards the alleged contradiction between the evidences of Mangayarkarasi (P.W.1) and the Investigating Officer (P.W.12), it is seen that after the incident, Mangayarkarasi (P.W.1) was rushed to Manikkam Hospital, where, she was examined by Dr. Vijayakumar (P.W.9) at 6.30 p.m. Therefore, one cannot take serious note of the stray statement made by Mangayarkarasi (P.W.1) in the cross-examination that the police came to her house at 6.30 p.m. .

12 The learned counsel for the petitioner further submitted that the police have failed to send the bloodstained clothes of the petitioner to the Forensic Sciences Laboratory for chemical examination. This again is a remissness in the investigation process.

13 Taking into account the gravity of the offence, this Court is of the view that this is not a fit case to suspend the sentence and release the petitioner on bail. It is made clear that whatever is observed in this order is only for the limited purpose of considering the instant bail application.

In the result, this criminal miscellaneous petition stands dismissed. The Registry is directed to post the criminal revision for final hearing immediately after the resumption of physical hearing.

-sd/-
21/08/2020

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 ADDITIONAL ASSISTANT SESSIONS JUDGE,
RASIPURAM, NAMAKKAL DISTRICT.

2 THE PRINCIPAL SESSIONS JUDGE
NAMAKKAL.

3 THE SUPERINTENDENT,
CENTRAL PRISON WOMEN CELL,
COIMBATORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE
RASIPURAM POLICE STATION,
NAMAKKAL DISTRICT.

6 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.G.ANBUCHEZHAIYAN Advocate on payment of necessary charges

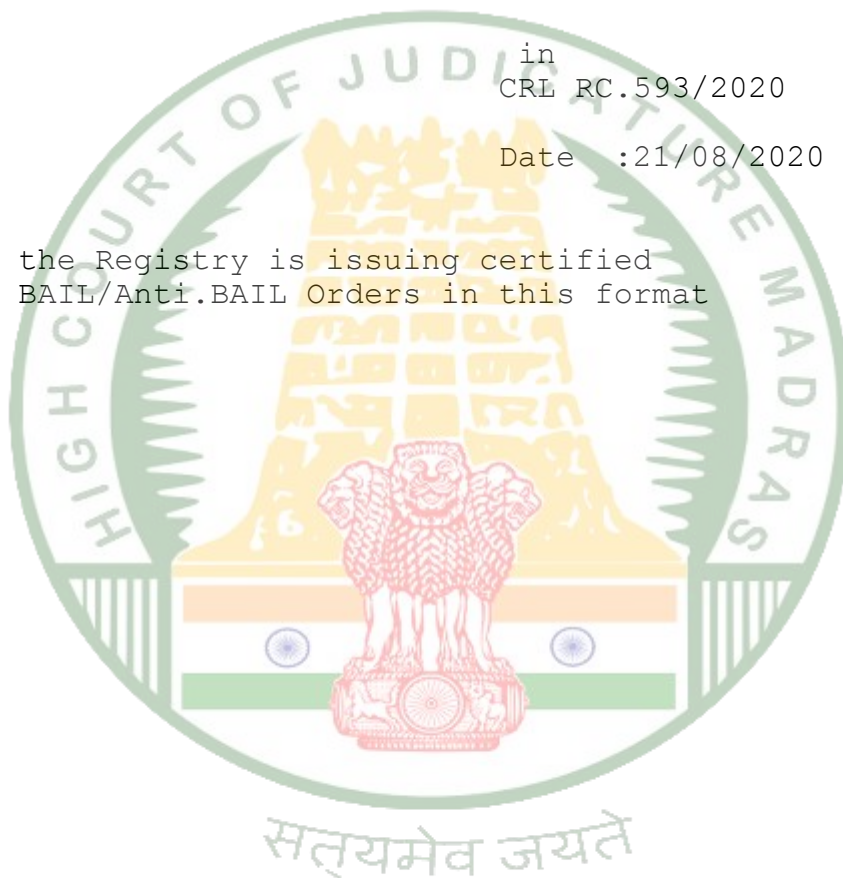
Order

in
CRL MP.4523/2020

in
CRL RC.593/2020

Date :21/08/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
cs 28/08/2020



WEB COPY