

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice P.RAJAMANICKAM

CRL MP No. 6551 of 2020

in CrI.A No. 431 of 2020

Nooril

... Petitioner

vs

State by
The Inspector of Police
Thondamuthur Police Station,
Coimbatore.

... Respondent

Petition filed under Section 389(1) of Cr.P.C. To suspend the sentence passed in S.C.No.239 of 2018 dated 30.09.2019 convicting the petitioner by I Additional District and Sessions Judge, Coimbatore and enlarge him on bail pending disposal of the appeal.

For Petitioner .. Mr.S.Thamaraiselvan

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

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

The petitioner has been arrayed as the sole accused in S.C.No. 239 of 2018 on the file of I Additional District and Sessions Judge, Coimbatore. The trial Court by judgment dated 30.09.2019 convicted the petitioner for the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the daughters of the deceased went to the house of the petitioner without an invite. The deceased quarrelled with them and drove them away using filthy language. This was questioned by the deceased. The petitioner once again quarrelled with the deceased stating that they came to his

house to steal. Pursuant to the said quarrel, the petitioner attacked the deceased with aruvalmanai and caused injuries. The occurrence was on 29.11.2013 and the deceased died on 02.12.2013.

3. Learned counsel appearing for the petitioner submitted that even assuming the case of the prosecution is true, the offence under Section 302 IPC is not made out. It is a case of provocation. The petitioner has been under incarceration from 28.10.2018 onwards. He is not likely to abscond as he is living in Tamil Nadu and his wife would stand as a surety. Hence this petition will have to be allowed.

4. Learned Additional Public Prosecutor appearing for the State submitted that P.Ws. 1 to 3 are the eye witnesses to the case. They have clearly deposed that the petitioner attacked the deceased. Therefore, the evidence of the Doctor, namely, P.W.12 coupled with Ex.P11, was rightly rejected by the trial Court as against the evidence of P.Ws. 1 to 3. Therefore, the present petition will have to be dismissed.

5. The question for consideration is as to whether a case under Section 302 IPC is made out, even assuming the case of the prosecution with respect to the occurrence is true. The petitioner has been under incarceration for more than two years. Now, the wife of the petitioner is willing to stand as a surety. Thus, considering the above, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that 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 I Additional District and Sessions Judge, Coimbatore and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

27/11/2020

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 I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
THONDAMUTHUR POLICE STATION,
COIMBATORE.

+1 C.C. to M/S. S.THAMARAISELVAN Advocate on payment of necessary
charges SR.No.7804

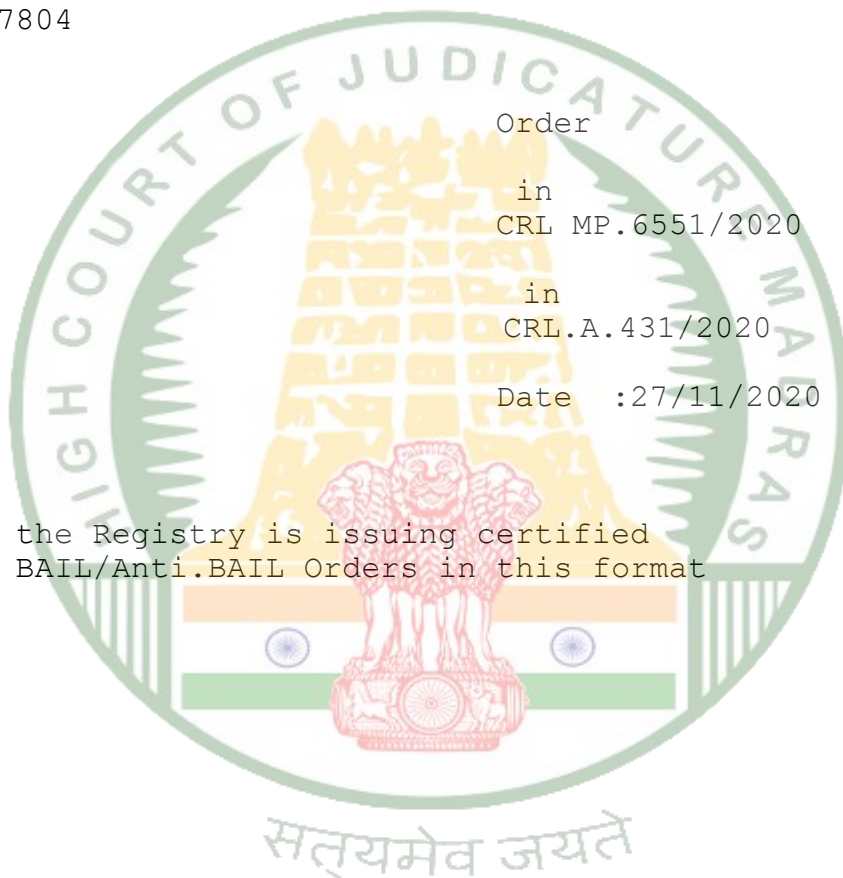
Order

in
CRL MP.6551/2020

in
CRL.A.431/2020

Date :27/11/2020

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