

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.07.2020

DELIVERED ON: 27.07.2020

CORAM :

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

Crl.M.P. No.14425 of 2019

in

Crl.R.C. No.1056 of 2019

1 Viji @ Vijayan
2 Kesavan

Petitioners

vs.

State represented by
the Inspector of Police
Magudanchavadi Police Station
Salem District
(Crl. No.412 of 2015)

Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. seeking to suspend the sentence and enlarge the petitioners on bail in connection with the judgment dated 30.10.2018 passed in S.C. No.314 of 2016 on the file of the Assistant Sessions Court, Sankari, and confirmed by the judgment dated 11.04.2019 passed in Crl.A.182 of 2018 on the file of the III Additional Sessions Court, Salem, pending disposal of the revision.

For petitioners Mr.Ezhilarasan

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

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ORDER

The petitioners faced prosecution in S.C. No.314 of 2016 before the Assistant Sessions Court, Sankari and were convicted under Section 394 read with Section 397 IPC and sentenced to undergo seven years rigorous imprisonment. Their appeal in Crl.A. No.182 of 2018 was dismissed by the III Additional District and Sessions Court, Salem, on 11.04.2019. Challenging their conviction and sentence, they have preferred Crl.R.C. No.1056 of 2019 and the instant Crl.M.P. seeking suspension of sentence and bail.

2 Heard Mr. R. Ezhilarasan, learned counsel for the petitioners and Mr.K. Madhan, learned Government Advocate (Crl. Side) appearing for the respondent State.

3 It is the case of the prosecution that on 03.07.2015, while the de facto complainant (Sivaraj - P.W.1) was returning home from his shop by his motorcycle, he was intercepted by a motorbike-borne three persons and was relieved of cash of Rs.18,000/- after a brief struggle. In his complaint as well in the evidence, Sivaraj (P.W.1) has clearly identified Kesavan (A.3) as the person who was on the wheels of the motorbike and Viji @ Vijayan (A.1) as the person sitting behind Kesavan (A.3). On the date of examination-in-chief, Siva (A.2) was not present in the Court. However, Sivaraj (P.W.1) stated that Viji @ Vijayan (A.1) was sitting between Kesavan (A.3) and another person whom he can identify.

4 The learned counsel for the petitioners submitted that no test identification parade was conducted and therefore, the identification becomes suspect.

5 As stated above, the trial Court and the appellate Court have appreciated the evidence of Sivaraj (P.W.1) and have based their findings thereon. It is not necessary that in every case test identification parade should be conducted as held by the Supreme Court in Mahabir vs. State of Delhi¹ and Birbal Choudhary vs. State of Bihar².

6 A cursory reading of the evidence of Sivaraj (P.W.1) shows that when the accused intercepted him, the headlight of his motorbike was on and he was able to see their faces clearly; when they demanded him to give them his bag, he resisted and therefore, they assaulted him with iron rods. He has also stated that the incident had taken place for five minutes. All these show that the witness has had sufficient opportunity to see the faces of the accused during his interaction with them. Therefore, non conduct of test identification parade cannot be said to be fatal in the facts and circumstances of the instant case.

7 Mr. Ezhilarasan took this Court through the findings of the trial Court and submitted that the trial Court returned a finding that Siva (A.2) was not involved in the offence and had acquitted him and that, that finding would apply to the present petitioners too. In the opinion of this Court, just because the trial Court had acquitted Siva (A.2), the evidence of Sivaraj (P.W.1) qua Viji @ Vijayan and Kesavan (A.3) cannot be wished away. As stated above, Siva (A.2) was not present in the Court when Sivaraj (P.W.1) was examined in chief.

8 Mr. Ezhilarasan further contended that the vehicle in which the accused were said to have travelled was purchased only on 11.11.2015, i.e., nearly after four months from the date of the incident and therefore, the prosecution case lacks merit. This Court perused the findings of the trial Court with regard to this aspect. It is true that the defence had examined two witnesses and marked Exs.D.1 to D.8. The trial Court has considered the exhibits and has held that Exs.D.3 to D.8 do not satisfactorily establish that they relate to the Apache motorbike (M.O.4). In the opinion of this Court, this aspect can be better appreciated only during the final disposal of the revision petition.

9 Be that as it may, the learned Government Advocate (Crl. Side) submitted that there are three previous cases of similar nature against the petitioners. In such view of the matter, this is not a fit case to suspend the sentence and release the petitioners on bail.

10 Accordingly, this Criminal Miscellaneous Petition seeking suspension of sentence and bail stands dismissed. It is made clear that all that has been observed above, is only for deciding the present sentence suspension and bail application and shall have no ramification when the main revision is taken up for disposal.

Post the revision for final hearing on 25.08.2020.

-sd/-
27/07/2020

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 ASSISTANT SESSIONS JUDGE
SANKARI.

2 THE III ADDITIONAL SESSIONS JUDGE,
SALEM.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE SUPERINTENDENT,
CENTRAL PRISON, BENGALURU.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
MAGUDANCHAVADI POLICE STATION,
SALEM DISTRICT.

C.C. to M/S.R.EZHILARASAN Advocate on payment of necessary
charges

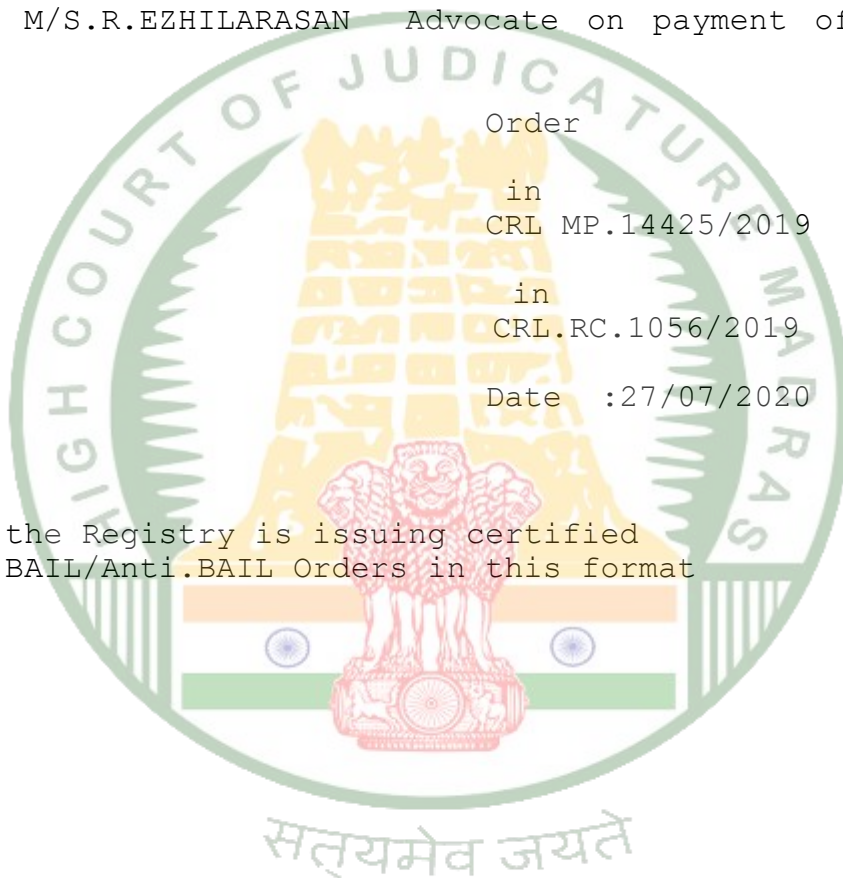
Order

in
CRL MP.14425/2019

in
CRL.RC.1056/2019

Date :27/07/2020

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