

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty First day of April Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION Nos.4229/2021 & 5674/2020

IN CRL.A.Nos.218 & 378 of 2020

R.VINAY

[PETITIONER / APPELLANT /
ACCUSED NO.4
IN CRL.MP.NO.4229/2021
IN CRL.A.NO.218/2020]

1 SUNIL @ SUNIL KUMAR
2 JEKKA @ JEGADEESAN

[PETITIONERS / APPELLANTS /
ACCUSED NOS.3 & 5
IN CRL.MP.NO.5674/2020
IN CRL.A.NO.378/2020]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
MATHIGIRI POLICE STATION,
KRISHNAGIRI DISTRICT.
CR.NO.27/2009

[RESPONDENT / RESPONDENT /
COMPLAINANT
IN BOTH THE PETITIONS]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.Nos.218 & 378/2020 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence passed in S.C.No.114 of 2009 on the file of the learned Additional District and Sessions Judge, Hosur, by its order dated 23.01.2020 and enlarge the petitioner on bail pending disposal of the above Crl.A.No.218/2020. [IN CRL.MP.NO.4229/2021]

[ii] suspend the sentence imposed in the Judgment dated 23.01.2020 in S.C.No.114 of 2009 on the file of the learned Additional District and Sessions Judge, Hosur and release the Petitioner on bail, pending disposal of the above Crl.A.No.378/2020. [IN CRL.MP.NO.5674/2020]

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.A.No.218 & 378/2020 on the file of the High Court and upon hearing the arguments of M/S.P.KUMARESAN, Advocate for the Petitioner [IN CRL.MP.NO.4229/2021 IN CRL.A.NO.218/2020] and M/S.B.MOHAN, Advocate for the Petitioner [IN CRL.MP.NO.5674/2020 IN CRL.A.NO.378/2020] and of M/S.K.PRABAKAR, Additional Public Prosecutor on behalf of the Respondent [IN BOTH THE PETITIONS] the court made the following order:-

(Order of the Court was made by R.PONGIAPPAN,J.)

These criminal miscellaneous petitions have been filed seeking to suspend the sentence of imprisonment imposed on the petitioners (Accused 3, 4 and 5) by judgment and order dated 23.01.2020 passed in S.C.No.114 of 2009 on the file of the Additional District and Sessions Court, Hosur.

2. It is the case of the prosecution that on 30.01.2009, A1 to A6 entered into the house of the de facto complainant with common object of committing dacoity and criminally trespassed into their house. The accused persons tied the hands of the PW1, PW2 and the deceased (Shakila Banu) with rope, taped their mouth with duct tape and robbed various jewel articles estimated about 22 sovereign, cash of a sum of Rs.3,000/- and escaped from the scene of occurrence. At the time of occurrence, the said Shakila Banu died, due to asphyxia.

3. The learned counsel for the petitioners would submit that the impugned judgment is erroneous and was pronounced in the light of bad evidence hidden with material contradictions and discrepancies and the petitioners have been incarcerated for more than one year. Learned counsel for the petitioners would further submit that the trial Court without appreciating the evidence given by PW1 and PW2 in a prospective manner, convicted the petitioners and thereby, they have to be granted the relief of suspension of sentence and enlarged on bail.

4. Per contra, Mr.K.Prabhakar, learned Additional Public Prosecutor would point out that the evidence given by PW1, PW2, PW4 and PW5, is very clear that when at the time of occurrence, the petitioners herein have unlawfully trespassed into the occurrence place and committed this offence. He would further submit that the offence committed by the petitioners, is a heinous one, involving a murder. He would further submit that if the sentence awarded by the trial Court is suspended, there may be a chance for absconding.

5. This Court carefully perused the judgment of the trial Court. It is seen that the evidence given by PW1 and PW2, who are the occurrence witness, have clearly identified the petitioners before the Judicial Magistrate, as one of the persons who had committed the offence as alleged by the prosecution. It is also seen that pursuant to the disclosure of the statements of the petitioners, the stolen property and weapons which were used for the offence have also been recovered.

6. The case of the petitioners (A3 to A5) is not in pari materia with that of the petitioners, inasmuch as, they are convicted not only based on the confession statement.

7. In such view of the matter, this is not a fit case to suspend the sentence of imprisonment and grant bail to the petitioners.

In the result, both the criminal miscellaneous petitions are dismissed. The Registry is directed to call for the records, prepare the typed set of papers immediately and list the main appeals for final hearing.

-sd/-

21/04/2021

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 DISTRICT AND SESSIONS JUDGE,
HOSUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
MATHIGIRI POLICE STATION,
KRISHNAGIRI DISTRICT.

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

C.C. to M/S.P.KUMARESAN Advocate on payment of necessary charges

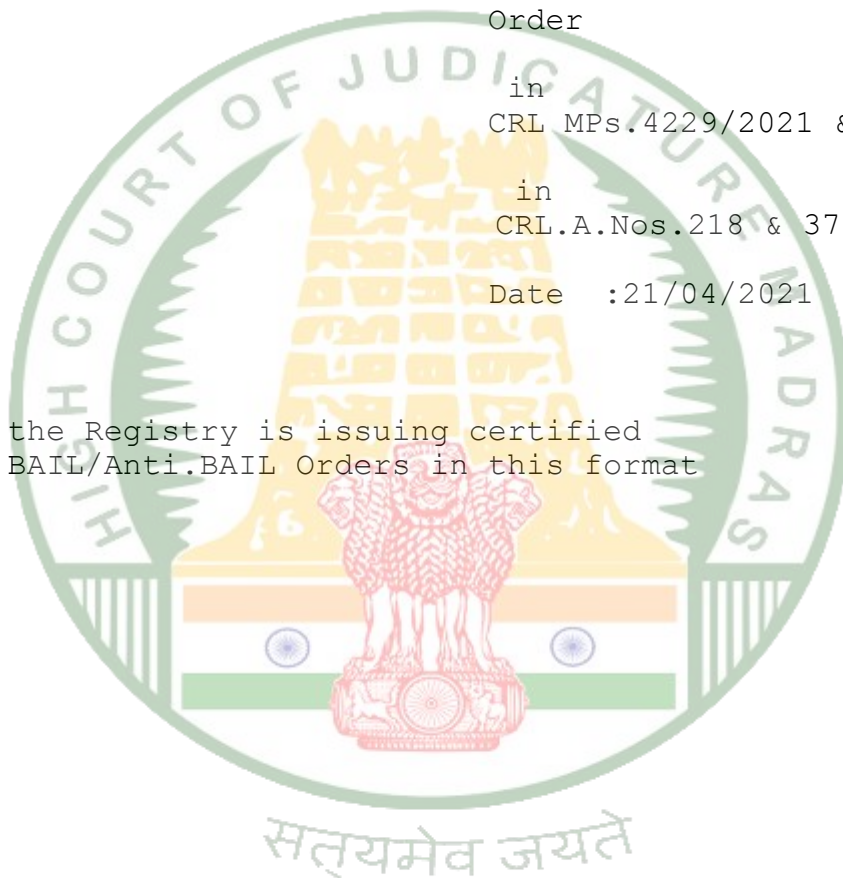
Order

in
CRL MPs.4229/2021 & 5674/2020

in
CRL.A.Nos.218 & 378/2020

Date :21/04/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cs 23/04/2021



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