Crl.M.P.No.5975 of 2020
in Crl.A.No.391 of 2020

M.NIRMAL KUMAR. J.,

The petitioner who arrayed as A3 in C.C.No.45 of 2009 on the file of XI Additional Session Judge (CBI cases relating to Banks & Financial institutions) Chennai had filed this petition seeking suspension of sentence.

2. The petitioner / A3 in C.C.No.45 of 2009 was tried along with five others accused. The petitioner was charged for offence punishable under Sections 120B r/w. 409, 420 IPC and under Sections 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. On conclusion of trial, the trial Court by judgment dated 29.09.2020 made in C.C. No.45 of 2009, found the petitioner guilty and sentenced her to undergo 2 years of R.I and in default to undergo 6 months of S.I. and also to pay fine for a sum of Rs.50,000/- for the offences punishable under Sections 120B r/w. 409, 420 IPC and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and also to undergo 2 years of R.I and in default to undergo 6 months of S.I. and to pay a fine of Rs.50,000/- for the offence under Section 420 IPC. The Lower Court has suspended the sentence till 28.10.2020.

3. The gist of the prosecution is that during the year 2006-2007 M/s.National Medicine Private Limited (A6) obtained credit facilities to the tune of Rs.6.19 Crores from Union Bank of India, Mount Road Branch. The Accused (A2), the petitioner herein (A3), and one Naresh Kumar (A4) were the Directors of A6 Medicine Company. The said Company is in violation of the terms of the loan, failed to pay Standard Chattered Bank, Nungambakkam, instead of closing the existing credit facilities to the tune of Rs.4.25 Crores, the amount was diverted and misused temporarily. The property situated at No.25/11, Vijayaraghavachari Road, T.Nagar, Chennai – 17, which was under civil dispute was given by A6 company as collateral security while obtaining the loan. Further, the company had provided the same property as security to State Bank of India, Royapettah Branch, for availing credit facilities. It is also alleged that other Co-accused A1 – Chief Manager of Union Bank of India and A5 – Portfolio Manager, Standard Chattered Bank, Nungambakkam, have conspired with A2 to A4 and caused wrongful loss to the tune of Rs.6.19 Crores to Union Bank of India, Mount Road, Chennai. A4, who was one of the directors of A6 company died during trial.

4. The learned counsel for the petitioner submitted that the petitioner is not shown as representative of A6 company except by marking some cheques signed by A3 as authorised signatory. The petitioner cannot be said to be actively participating in the Management of A6. He further submitted that the petitioner had given an explanation during 313 proceedings, that she is a house wife and she never had any role in running A6 company, she was made as one of the Director of A6 company due to her family position and for sentimental reasons. None of the witnesses have stated that the petitioner had taken active part in the functioning of A6 company and none of the bank witnesses have stated that the petitioner had represented the company and made any false representation to them. Learned counsel for the petitioner submitted that the signing of bank documents is as per the requirement of the Bank that all the Directors of the company have to sign and despite being a dormant director, she had signed in the loan documents as per the requirements. Further, he submitted that only after deliberation and negotiation, the said bank had sanctioned entire loan amount to A6 company after getting appropriate approval from the head office and one time settlement was also made. He further submitted that D.W.9 and D.W.11 were examined and Ex.D.30 – Copy of settlement certificate given by Union Bank of India, Chennai, Ex.D.37 – attested copy of No due certificate issued by Assets

Recovery Branch, Union Bank of India at Broadway, Chennai and Ex.D.38 – copy of Debt Recovery Tribunal were produced before the trial Court and the trial Court failed to consider the evidence and documents produced by the defence. He further submitted that the documents of collateral security of property situated at No.25/11, Vijayaraghavachari Road, T.Nagar, Chennai -17, were collected during the investigation, the same was not marked as Exhibits by the prosecution and this document was returned by the bank, since the loan was fully settled. He further submitted that the civil dispute pending between A6 company and other private parties are settled. These facts were spoken by D.W.9. Learned counsel for the petitioner submitted that A6 company is an ongoing concern which is in the distribution of pharmaceuticals from the year 1999 and due to market condition the company suffered a loss and availed loan and it was never the intention of the company to cheat anyone. He further submitted that lower court failed to look into the fact that there is no material produced by the prosecution to show that A6 company used its assets as security for availing credit facilities from State Bank of India, Royapettah Branch, Chennai and the lower Court had given a wrong finding that the collateral security were handed over to Union Bank of India, Mount Road Branch. This submission is made without prejudice to the contention of the petitioner that the petitioner is no way involved in the day to day affairs of A6 company. He submitted that the petitioner is a lady / house wife, who is having health ailments and she has to take care of her family. The petitioner was on bail during investigation and trial and the fine amount of Rupees One Lakh had been paid on 29.09.2020 vide receipt No.177250 and the petitioner's sentence has been suspended by the trial Court till 28.10.2020.

5. Learned Special Public Prosecutor submitted that in this case there are totally six accused. A1 to A6 have conspired together and thereby caused wrongful loss to the tune of Rs.6.19 crores to the Union Bank of India, Mount Road Branch. He submitted that A2 to A4 are the directors of A6 company, A1 is the Branch Manager of Union Bank of India, Mount Road Branch, A5 is the Portfolio Manager of Standard Chartered Bank and A1 and A5 have conspired with A2 to A4 in commission of offence and during availing of loan, by making false representation, A1 to A5 created forged documents of no due certificate and obtained original documents of mortgage property being aware about the loan dues of Standard Chattered Bank to the tune of Rs.425 lakhs. Further he submitted that the amount of Rs.425 lakhs which was received from Union Bank of India was misappropriated and converted to own use by A2 to A4 and the

property situated at No.25/11, Vijayaraghavachari Road, T.Nagar, was already ordered to maintain status quo by this Court and suppressing the same, the said property was given as collateral security. He further submitted that A2 to A4 had also availed cash credit facilities for a sum of Rs.480 lakhs from State Bank of India by giving security of the same property which has been already mortgaged with Union Bank of India and the stocks available in the go-down were also removed and no entries were made in the corresponding registers. He submitted that on completion of investigation, charge sheet has been filed in this case and P.W.1 to P.W.20 were examined, Exs.P.1 to P.280 were marked on the side of the prosecution and D.W.1 to D.13 were examined and Ex.D.1 to Ex.D.38 were marked on defence side and no material objects were marked on either side. The trial Court after full fledged trial and on considering the materials and evidence in this case, passed an elaborate judgment convicting the accused. Hence, he opposed suspension of sentence to the petitioner.

6. Considering the submission and perusal of materials produced and the judgment of the lower court, this Court finds that the Accused A3 is a lady and one of the Directors of A6 company which is a distributor of medicines. A6 is an on going concern from the year 1999 and for their business they had availed loan

from the Union Bank of India and prior to it they had also availed loan facilities from the Standard Chartered Bank. The allegation against the petitioner is that the petitioner being a Director along with A2 and A4 had made false representation while availing loan by giving collateral security and on availment of loan, the same has been diverted, misappropriated and converted for own use and had not followed the loan condition. When the loan with the Union Bank of India was in subsistence, by showing the same collateral property, the cash facilities have been availed from the State Bank of India, Royappetah Branch, Chennai, and false stock positions have been submitted.

7. It is the contention of the petitioner that though she is a house wife, she has been made as a Director of A6 company and she had not involved with the day to day affairs of A6 company, she had not approached any bank, she had not made any false representation with the bank in availing loan and the signature found in the loan documents is due to bank requirements. She is only a dormant Director and for sentimental reason she is shown as one of the Director of the company. Other than this she has nothing to do with A6 company and none of the witnesses in this case have implicated the petitioner.

8. It is seen that loan amount of A6 company, by way of one time settlement is settled. To prove this fact, D.W.9 and D.W.11 were examined and Ex.D.30 – Copy of settlement certificate given by Union Bank of India, Chennai, Ex.D.37 – photostate copy of No due certificate issued by Assets Recovery Branch, Union Bank of India at Broadway, Chennai and Ex.D.38 – copy of Debt Recovery Tribunal were produced before the trial Court. Thus, the loan amount is settled to the satisfaction of the bank. The petitioner was on bail during the investigation and trial and the trial Court has already suspend the sentence till 28.10.2020.

9. This Court finds that there are arguable points in this case. The petitioner is a lady. Further, it would take some time for the appeal to be taken up for final hearing and in view of the same, this Court is inclined to grant suspension of sentence and grant bail to the petitioner.

10. Accordingly, the sentence of the petitioner is suspended and the petitioner is directed to be enlarged on bail, on condition that the petitioner shall execute 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 the learned XI Additional

Special Judge, CBI Cases relating to Banks & Financial institutions, Chennai – 104, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court once in three months on the first working day of every 3rd month at 10.30 a.m. till the disposal of appeal.

01.10.2020

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Note: Issue order copy on 09.10.2020.

M.NIRMAL KUMAR.J.,

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