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Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2022

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.13543 of 2022
in
Crl.A.No.981 of 2022

V.Muthuvel

... Petitioner/Accused

Vs.

The State represented by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Erode District.
Crime No.19/AC/2003/ER

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C to suspend the sentence imposed in the judgment dated 28.07.2022 made in Spl.C.C.No.29 of 2015 on the file of the learned Chief Judicial Magistrate/Special Judge of Erode and release the petitioners on bail pending Criminal Appeal.

For Petitioner : Mr.B.Mohan

For Respondent : Mr.S.Udhayakumar
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence of imprisonment imposed by



Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

the learned Chief Judicial Magistrate/Special Judge, Erode by judgment dated 28.07.2022 made in Spl.C.C.No.29 of 2015 and enlarge the petitioner/appellant on bail pending disposal of the above Criminal Appeal.

2. The petitioner/appellant herein is the accused in Spl.C.C.No.29 of 2015 on the file of the Chief Judicial Magistrate/Special Judge, Erode. He was found guilty for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and he has been convicted and sentenced as under:

Petitioner /Accused	Conviction	Sentence
Petitioner/Accused	Sections 7 of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default to undergo simple Imprisonment for one month.
	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default to undergo simple Imprisonment for one month.
The sentences are directed to run concurrently		
Total fine imposed against the petitioner/Accused is Rs.10,000/-		



Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.981 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Before the trial Court, on the side of the prosecution 15 witnesses examined as P.W.1 to P.W.15 and marked 26 documents as Exs.P1 to P26 and M.O.1 to M.O.6 marked. On the side of the defence, no witnesses examined and no exhibits marked.

5. The gist of the case is as follows:-

The petitioner/accused was working as Record Clerk in the Government Hospital, Gobichettipalayam. P.W.2/de-facto complainant is an agriculturist. He had some animosity with one V.N.Palanisamy during the Panchayat election. They assaulted each other and a case was registered in Cr.No.54 of 2002 in Siruvalur Police Station under Sections 341, 323 and 506(ii) of IPC against the de-facto complainant. On 13.04.2022, the de-facto complainant was admitted in the Government Hospital, Gobichettipalayam. Based on his counter complaint, a criminal case in Cr.No.55 of 2002 was registered by the Siruvalur Police Station. The said V.N.Palanisamy admitted the offence and paid fine amount, whereas the de-facto complainant contested the case, which was filed against him. In order to defend the case faced by the de-facto complainant, he required



Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

would certificate for the injuries sustained on 12.04.2002, for which, he had approached the accused, who was working as Record Clerk in Government Hospital, Gobichettipalayam. At that time, he said to have been demanded bribe amount for a sum of Rs.1,000/-, since the record is old one which has to be searched and secured. The de-facto complainant not willing to pay the bribe amount and hence lodged a complaint before the respondent Police and thereafter pre-trap proceedings were conducted. The de-facto complainant along with the accompanying witness/P.W.3 went to the Government Hospital, thereafter the demand was reduced to Rs.500/-. The de-facto complainant, who is the decoy witness, paid the amount of Rs.500/- to the accused. Thereafter, the Trap Laying Officer/P.W.14 on getting pre-arranged signal rushed into the office and caught the petitioner/accused while receiving bribe amount. Phenolphthalein test turned positive confirming that the petitioner had received bribe amount. Thereafter, the accused was arrested and the amount was recovered and the investigation was handed over to P.W.15, who conducted further investigation, examined witnesses, obtained sanction order and chemical analysis report and filed charge sheet in this case. The trial Court on completion of the trial, convicted the petitioner/accused as above.



Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

6.The contention of the petitioner is that P.W.2/de-facto complainant had some animosity with one V.N.Palanisamy during Panchayat election. Based on the complaint given by the de-facto complainant, a criminal case in Cr.No.55 of 2002 was registered by the Siruvalur Police Station. In order to defend in that case, the de-facto complainant made an application for wound certificate one year later. The petitioner is not an authority to issue the wound certificate and he has no reason to demand any bribe amount. Further the date of the trap is admitted to be a public holiday. There is no reason for the petitioner to attend the office on that day. The trial Court giving explanation that P.W.10-G.Leelavathi, Assistant in Government Hospital, Gobichettipalayam, who attended the work on 22.11.2003, confirmed that during holidays, if situation requires, the staff would attend the hospital for official work. The petitioner had clearly stated that the amount has been thrust on his pocket and thereafter proceeded as though the trap has been confirmed. Learned counsel for the petitioner submitted that the petitioner has paid the fine amount of Rs.10,000/- and the Lower Court has suspended the sentence of the petitioner till 29.08.2022. Further, the petitioner has arguable points and fair chance of success in this appeal. Thus, he prayed for Suspension of Substantive Sentence of Imprisonment imposed on the petitioner till the disposal of the appeal.



Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

7.Learned Government Advocate (Crl.Side) appearing for the respondent/Police submitted that the petitioner/accused received the amount and kept the same in his shirt pocket. Further, the trapped amount was recovered from the accused, which also tested positive. The petitioner was unable to give any reason even during questioning under Section 313 Cr.P.C. and had not given any explanation to discard the statutory presumption under Section 20 of Prevention of Corruption Act . The prosecution on the evidence and materials have clearly proved the case. The trial Court, on considering the evidence and materials, had rightly convicted the petitioner. He would further submit that the sentence imposed on the accused have been suspended by the trial court till 29.08.2022 and thereafter, no extension was sought for by the petitioner. Accordingly, the learned Government Advocate objected for the suspension of sentence of the petitioner.

8. Learned counsel for the petitioner submitted that the petitioner was surrendered and now he is in confinement.

9. Considering the facts and circumstances of the case and in view of the above submission and also taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken



Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

up for final hearing, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

10. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he 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 Chief Judicial Magistrate/Special Judge (Under Prevention of Corruption Act), Erode.

11. Further, the petitioner is directed to appear before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

13.09.2022
(2/2)

rsi

To

1. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Erode District.
2. The Chief Judicial Magistrate/Special Judge,
(Under Prevention of Corruption Act), Erode.



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Crl.M.P.No.13543 of 2022
in Crl.A.No.981 of 2022

M. NIRMAL KUMAR, J.

rsi

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

Crl.M.P.No.13543 of 2022
in
Crl.A.No.981 of 2022

13.09.2022
(2/2)