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Crl.M.P.No.14703 of 2022
in Crl.A.No.1094 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2022

CORAM:

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

Crl.M.P.No.14703 of 2022
in
Crl.A.No.1094 of 2022

P.Baskarsuresh Kumar

... Petitioner/Accused

Vs.

State rep. by
The Deputy Superintendent of Police,
Chennai City-I Detachment,
Vigilance and Anti-Corruption,
Chennai.
(Crime No.19 of 2008)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C to suspend the sentence of imprisonment imposed on the petitioner by judgment dated 30.08.2022 made in C.C.No.13 of 2011 on the file of learned Special Judge under Prevention of Corruption Act/The Special Court for the cases under Prevention of Corruption Act at Chennai-104 and enlarge the petitioner on bail pending disposal of the above Criminal appeal on the file of this Court.

For Petitioner : Mr.S.Ashok Kumar

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



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence of imprisonment imposed by the learned Special Judge, Special Court for the cases under Prevention of Corruption Act, Chennai-104 by judgment dated 30.08.2022 made in C.C.No.13 of 2011 and enlarge the petitioner/appellant on bail pending disposal of the above Criminal Appeal.

2. The petitioner/appellant herein is the accused in C.C.No.13 of 2011 on the file of the Special Judge/Special Court for the cases under Prevention of Corruption Act, Chennai. 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 one year and to pay a fine of Rs.1,000/-, in default to undergo simple Imprisonment for three months.
	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default to undergo simple Imprisonment for three months.
The sentences are directed to run concurrently		
Total fine imposed against the petitioner/Accused is Rs.2,000/-		



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3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.1094 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

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

The petitioner, who was working in Arignar Anna Government College and Hospital, was in-charge of Drug Testing Laboratory. The de-facto complainant had applied for grant of license for the manufacture of Ayurvedic Medicines, for which, a demand has been made with the de-facto complainant on 18.08.2008, 14.09.2008, 03.10.2008 and finally on 23.10.2008. Initially, the demand was for a sum of Rs.1,20,000/-. Thereafter, it was reduced to Rs.1,00,000/-. The de-facto complainant not willing to pay the amount. Hence, he lodged a complaint before the Trap Laying Officer/P.W.14. The Trap Laying Officer had taken the service of P.W.3/Government official and thereafter the trap was laid on 24.10.2008, on which date, from the petitioner's table an amount of Rs.1,00,000/- has been recovered. Hence, the case has been registered. Investigation in this case has been completed and charge sheet filed.

5. Before the trial Court, on the side of the prosecution 15 witnesses examined as P.W.1 to P.W.15 and marked 34 documents as Exs.P1 to P34 and



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marked 3 material objects as M.O.1 to M.O.3. On the side of the defence, the petitioner examined himself as D.W.1 and marked 22 documents as Exs.D1 to D22.

6. The primary contention of the petitioner is that the prosecution had projected the case as though a complaint was lodged and F.I.R. in Cr.No.19 of 2008 was registered on 24.10.2008, shadow witnesses were called and thereafter, pre-trap proceedings were conducted on 24.10.2008. Though the prosecution contends that on 24.10.2008, entire proceedings taken place, from Exs.D15, D16, D21 & D22, which are the requisition letters sent by the Trap Laying Officer to the office of P.W.3 and L.W.4, it is evident that Cr.No.19 of 2008 was registered on 23.10.2008 itself. Further, in the F.I.R., the investigating officer admitted that F.I.R. is chronologically numbered. In this case, Serial No.0814132 is found missing in between Cr.No.18 of 2008 and Cr.No.19 of 2008, which probabalise the case of the petitioner. Further, the trap amount was only recovered from the table. The trap amount has been deceitfully kept on the table of the petitioner without his knowledge and thereafter a trap has been projected against the petitioner. Further he submitted that Ex.D8 is the minutes of the Expert Committee Meeting, which would show that the de-facto complainant's application was rejected for technical reason and he was directed to correct and



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resubmit the same. Further, the petitioner is only member of the committee along with three others. The de-facto complainant used this trap somehow to get the license. The petitioner was the youngest and first person, who was appointed as State Drug License Authority. Aggrieved by the appointment of the petitioner, the co-workers of the petitioner's department filed a writ petition before this Court and the same was dismissed. P.W.2 has been used by the rival group of the petitioner and filed a false complaint against the petitioner. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Apex Court in a case of *State of Punjab vs. Madan Mohan Lal Verma* reported in (2013) 14 SCC 153. Learned counsel further submitted that the petitioner has paid the fine amount of Rs.2,000/- and the Lower Court has suspended the sentence of the petitioner till 03.10.2022. 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.

7. Learned Government Advocate (Crl.Side) appearing for the respondent/Police submitted that P.W.2 is the decoy witness, P.W.3 is the accompanying witness and P.W.14 is the Trap Laying Officer. The evidence of P.W.2 and P.W.3 corroborate with each other. The trap has been successfully



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completed and a sum of Rs.1,00,000/- has been seized from the table of the petitioner. The petitioner had demanded huge amount of Rs.1,00,000/- for giving license. The points raised by the petitioner have been raised during trial, which has been considered by the trial Court and the trial Court convicted the petitioner. In this case, P.W.1 is the sanctioning authority, who accorded sanction for prosecution. Accordingly, the learned Government Advocate objected for the suspension of sentence of the petitioner.

8. On a perusal of the material, it is seen that even prior to the complaint, crime number has been assigned and letters have been sent to the accompanying witnesses, which causes great concern. Investigation must not only be fair, it must appear to be fair. Further recovery was made only from the table of the petitioner.

9. Considering the facts and circumstances of the case 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 up for final hearing, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.



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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 Special Judge, Special Court for the Cases under Prevention of Corruption Act, Chennai-104.

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.

21.09.2022
(2/3)

rsi

To

1. The Deputy Superintendent of Police,
Chennai City-I Detachment,
Vigilance and Anti-Corruption,
Chennai.
2. The Special Judge,
Special Court for the Cases under
Prevention of Corruption Act, Chennai-104.
3. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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