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*Crl.MP.No.15293 of 2022 in Crl.A.No.1103 of 2022*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 10.10.2022**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**Crl.MP.No.15293 of 2022**

**in**

**Crl.A.No.1103 of 2022**

K.Karthikeyan, aged 66 years,  
S/o.Kannaiyiram,  
Assistant A3 Division,  
Puzhal Panchayat Union Office,  
Chennai.

And having house address at:

No.12, Main Road,  
Ayyappan Nagar Main Road,  
Kamaraj Nagar,  
Avadi, Chennai.

... Petitioner

Vs.

The Inspector of Police,  
Vigilance and Anti-Corruption,  
City Special Unit – III  
Nandhanam, Chennai 600 020.  
Crime No.05/AC/2010/CC-II

... Respondent

**PRAYER** : This Petition is filed under Section 389 (1) of Cr.P.C., to suspend the sentences of imprisonment passed by the learned Magistrate pursuant to his Judgment of conviction dated 30.08.2022 in Spl.C.C.No.1 of 2012 and enlarge the Petitioner on bail, pending disposal of present Appeal.



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For Petitioner : Mr.K.Subhashini  
for M/s.Chennai Law Associates

For Respondents : Mr.S.Udhaya Kumar  
Government Advocate (Crl. Side)

**ORDER**

This Criminal Miscellaneous Petition has been filed by the Petitioner/Accused, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate/Special Judge, Thiruvallur District by judgment dated 30.08.2022 made in Spl.C.C.No.1 of 2012 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.01 of 2012 on the file of the learned Judicial Magistrate/Special Judge, Thiruvallur District. 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 | Section 7 of the Prevention of Corruption Act, 1988.                  | To undergo simple imprisonment for a period of three years and to pay a fine of Rs.20,000/-, 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 simple imprisonment for a period of three years and to pay a fine of Rs.20,000/-, in default, to undergo                                       |



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| <b>Petitioner<br/>/Accused</b>                                   | <b>Conviction</b> | <b>Sentence</b>                       |
|------------------------------------------------------------------|-------------------|---------------------------------------|
|                                                                  |                   | simple Imprisonment for three months. |
| The sentences are directed to run concurrently                   |                   |                                       |
| Total fine imposed against the Petitioner/Accused is Rs.40,000/- |                   |                                       |

3. Challenging the above conviction and sentence, the Petitioner/accused has filed Crl.A.No.1103 of 2022 along with the instant Miscellaneous Petition, seeking suspension of sentence and bail.

4. The case of the prosecution is that the Defacto complainant said to have approached the Petitioner for getting building permission on 22.02.2010 and the Petitioner is said to have demanded a sum of Rs.4000/-. The Defacto Complainant/PW2 gave a complaint dated 22.02.2010 against the Petitioner to the Vigilance and Anti-Corruption Special Team and the same was registered as FIR in Crime No.5/AC/2010/CC-II. On 23.02.2010, on the complaint of Defacto Complainant, trap was laid, PW2 and PW3/accompanying witness have come to the office of the Petitioner. At that time as per demand, PW2 paid a sum of Rs.4000/- as bribe amount to the Petitioner and the Petitioner on receipt of the same, kept the tainted money in a cover on the table. PW10/Trap Laying Officer on getting signal, caught the accused/Petitioner red handed and recovered the tainted money. Phenolphthalein test was conducted by PW9,



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which confirmed the receipt of tainted money. Thereafter, on completion of investigation, final report has been filed.

5. Before the trial Court, on the side of the prosecution 12 witnesses examined as P.W.1 to P.W.12 and 30 documents marked as Exs.P1 to P30 and 3 material objects marked as M.O.1 to M.O.3. On the side of the defence no one examined and no documents marked.

6. The contention of the Petitioner is that the Petitioner/A3 recently joined as Assistant in A3 Section, Puzhal Panchayat Union Office. Prior to that PW2 through PW4 approached the previous officer for seeking building permission for extension of construction. The brother of PW4, an approved surveyor used to get license and for which demanded Rs.6000/-. Thereafter it got delayed, hence, PW2 directly approached the Petitioner, seeking building permission. It is projected as if the Petitioner demanded Rs.4000/- for issuance of building permission. The Petitioner earlier reprimanded PW4 for acting as agent, for this reason PW4 has set up PW2 and with that motive the Petitioner has been falsely implicated in this case. Further trap amount of Rs.4000/- was recovered from the cover on the table and not from the Petitioner. The Petitioner was forced to handle the trap amount. The learned counsel for the



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Petitioner further submitted that for that reason only the Petitioner left hand wash was not conducted and it is natural that any person receiving amount would use both hand in handing the money. In this case it is not so, probablising the defence of the Petitioner that the amount was kept inside the cover without his knowledge. PW3 the accompanying witness also confirmed that the money was kept inside the file by the Petitioner. PW5, the other public witness who accompanied PW10/TLO, confirms the recovery from the cover and not from the Petitioner in person. Further the Petitioner submitted that in the recovery mahazar, it is recorded that the Petitioner not demanded any bribe amount. In this case, there is no demand by the Petitioner. Further, the Petitioner's explanation has not been recorded as given by him. The trial Court not considered these aspects and convicted the Petitioner.

7. Learned Government Advocate (Crl. Side) appearing for the respondent/Police submitted that PW1 is the sanction witness, PW2 is the decoy witness, PW3 is the accompanying witness. The evidence of PW2 & PW3 are in conformity. PW10/TLO after getting the pre-arranged signal recovered Rs.4000/- trap amount from the Petitioner, who received the amount and kept it in a cover. PW4, other public witness confirms the recovery. The other official witnesses confirmed that already the building permission was granted to the



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PW2 and the Petitioner was holding the same, expecting bribe amount. The explanation given by the Petitioner is not satisfactory. The trial Court on the evidence and materials had rightly convicted the Petitioner.

8. On a perusal of the materials, it is seen that the trial Court suspended the sentence of the Petitioner till 30.09.2022 and this Petition filed on 27.09.2022. The Petitioner was on bail during investigation and during trial.

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.

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, Thiruvallur.



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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.

10.10.2022  
(2/2)

*sai*

*Note: Issue order copy 11.10.2022.*



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To

1. The Chief Judicial Magistrate/Special Judge,  
Thiruvallur.
2. The Public Prosecutor,  
High Court, Madras.
3. The Superintendent of Prison,  
Central Prison, Puzhal.



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**M.NIRMAL KUMAR, J.**

*sai*

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**Dated: 10.10.2022**  
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