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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

<u>Crl.M.P.No.15640 of 2022</u>
<u>in Crl.A.No.1131 of 2022</u>

A.J.Khalid S/o.Abdul Jabbar	...	Petitioner / A-2

versus

State rep. by its The Inspector of Police, Vigilance and Anti-Corruption, Special Investigation Cell, Chennai. (Crime No.6/2011/AC/HQ)	...	Respondent / Complainant

<u>PRAYER</u>: Criminal Miscellaneous Petition has been filed under Section 389 (1) r/w 439 of Cr.P.C., to suspend the sentence passed in C.C.No.3 of 2012 *vide* judgment dated 22.09.2022 on the file of the learned Special Judge, Special Court for the Cases under Prevention of Corruption Act, 1988, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner	:	Mr.Vimal B.Crimson
For Respondent	:	Mr.S.Udaya Kumar Government Advocate (Crl.Side)

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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/A-2, seeking suspension of sentence of imprisonment imposed by the learned Special Judge, Special Court for the Cases under Prevention of Corruption Act, 1988, Chennai, by judgment dated 22.09.2022 made in C.C.No.3 of 2012 and enlarge the petitioner/appellant on bail pending disposal of the above Criminal Appeal.

2. The petitioner/appellant herein is the accused No.2 in C.C.No.3 of 2012 on the file of the learned Special Judge, Special Court for the Cases under Prevention of Corruption Act, 1988, Chennai. He was found guilty for the offences punishable under Section 109 IPC r/w 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act and he has been convicted and sentenced as under:

Petitioner / A-2	***Conviction***	***Sentence***
Petitioner / A-2	Section 109 IPC r/w.7, 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.

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3. Challenging the above conviction and sentence, the petitioner/A-2 has filed Crl.A.No.1131 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

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

4.1. The petitioner is the Superintendent of the Tamil Nadu Slum Clearance Board, Kamarajar Salai, Chennai. On 11.02.2004, the *de facto* complainant approached A-1 and applied for a Sale Certificate for his land and for which, a demand has been made with the *de facto* complainant for a sum of Rs.1,500/-. Thereafter, the petitioner explained the same to A-2, who in turn informed him to give the amount as instructed by A-1. Hence, the *de facto* complainant handed over the tainted money of Rs.1,500/- to A-1. Thereafter, the Trap Laying Officer/P.W.14 on getting pre-arranged signal rushed to the spot, caught the accused and recovered the tainted money from the table drawer of A-2. Hence, the case has been registered.

5. Before the trial Court, on the side of the prosecution 16 witnesses examined as P.W.1 to P.W.16 and marked 22 documents as

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Ex.P.1 to Ex.P.22 and marked 3 material objects as M.O.1 to M.O.3. On the side of the defence, no witness examined and no document marked.

6. The contention of the petitioner is that the petitioner is the Superintendent of the Tamil Nadu Slum Clearance Board, Kamarajar Salai, Chennai. The other accused namely, A-1 had demanded bribe amount of Rs.1,500/- from the *de facto* complainant (P.W.3). It is submitted that the petitioner's name does not find place in the complaint, F.I.R or in the Entrustment Mahazar. From the evidence of P.W.3, it could be seen that P.W.4 being a official witness had improved the case. Further, P.W.14/Trap Laying Officer had gone by the version of P.W.4 and not by the version of the *de facto* complainant with regard to the demand. Any trap case, demand, acceptance and recovery, all the three to be proved. In this case, admittedly there is no demand. Further, when there is no charge against the petitioner for an offence under Section 109 IPC, the trial Court while rendering the judgment on its own added Section 109 IPC, without giving opportunity to the petitioner to give an explanation, in the case of abetment. The admitted case of the prosecution is that the petitioner for the first time met the *de*

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facto complainant only on the date of trap. The *de facto* complainant is none other than the Police Personnel, who is well verse with the legal proceedings. In such circumstances, the question of Section 7 of Prevention of Corruption Act will not arise. The petitioner has been falsely implicated in this case. Further, it is submitted that the petitioner has paid the fine amount of Rs.1,000/- and the Lower Court has suspended the sentence of the petitioner till 26.10.2022. 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 (Criminal Side) appearing for the respondent submits that P.W.3 is the *de facto* complainant, who had lodged a complaint against the accused for demanding bribe amount. P.W.3 was allotted a slum clearance plot, for which, the entire amount has been paid as early as in the year 2004. Thereafter, in the year 2010, he had made an application for issuance of a Sale Certificate. At that time, he had approached the Estate Office at Thirumangalam, Chennai and met P.W.5 (Revenue Inspector), who had come and inspected the property. Thereafter,

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the file was sent to TNSCB Head Office, where A-1 had demanded bribe amount of Rs.1,500/-, for which, a complaint has been lodged. A-1 had taken the *de facto* complainant to the table of A-2 and the *de facto* complainant handed over the bribe amount directly to A-2 and A-2 had received the same and kept in his table drawer and P.W.3, who had confirmed the demand and acceptance of money. The trap was successfully laid. P.W.14 is the Trap Laying Officer. P.W.4 is the official witness had confirmed the case. The trial Court on the evidence of P.W.1 to P.W.16 and Ex.P.1 to Ex.P.22 and M.O.1 to M.O.3 had convicted the petitioner. He further submitted that the Lower Court has suspended the sentence of the petitioner till 26.10.2022. Accordingly, the learned Government Advocate (Crl. Side) objected for the suspension of sentence of the petitioner.

8. 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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9. 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.

10. 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.

17.10.2022

<u>Note : Issue Order Copy by Today</u>
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To

1.The learned Special Judge,
Special Court for the Cases
under Prevention of Corruption Act,
Chennai.

2.State rep. by its
The Inspector of Police,
Vigilance and Anti-Corruption,
Special Investigation Cell,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

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M. NIRMAL KUMAR, J.

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