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CRL MP(MD)



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

RESERVED ON	01.09.2022
PRONOUNCED ON	12.09.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.9708 of 2022
IN
CRL.A(MD) No.505 of 2022

M.A.BALU

... PETITIONER/APPELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION WING,
THIRUCHIRAPPALLI.
(CRIME NO. 03/2007).

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence of imprisonment passed in Special Case No. 92/2011 dated 03.08.2022 on the file of the Learned Special Judge for Trial of cases under the Prevention of Corruption Act, Thiruchirappalli by granting bail till the disposal of the Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.RAMAKRISHNAN.K.K, Advocate for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Special Case No.92 of 2011, dated 03.08.2022, on the file of the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, in Crime No.03 of 2007 on the file of the respondent police, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that the petitioner/accused was working as a Junior Assistant in Tamil Nadu Adi Dravidar Housing Development Corporation, Trichy, that the petitioner/accused on 08.03.2007 had demanded and accepted a bribe of Rs.3,000/- from the

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defacto complainant for issuance of subsidy amount Rs.25,000 for purchase of auto rickshaw and that on the basis of the complaint lodged, FIR came to be registered in Crime No.03 of 2007 for the offences under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

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3. After trap proceedings, investigation was conducted and charge sheet was laid before the Special Court for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, and the same was taken on file in Special Case No.92 of 2011.

4. During the trial, the prosecution has examined 11 witnesses as P.W.1 to P.W.11, exhibited 26 documents as Ex.P.1 to Ex.P.26 and marked 5 material objects as M.O.1 to M.O.5. The defense has adduced neither oral nor documentary evidence.

5. The learned Special Judge, upon considering the evidence adduced and on hearing the arguments advanced by both the sides, has passed the impugned judgment dated 03.08.2022 convicting the petitioner/sole accused for the offence under Section 7 of the Prevention of Corruption Act and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Simple Imprisonment and for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Simple Imprisonment and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner/accused preferred the present appeal along with the above application for suspension of sentence.

6. The learned counsel for the petitioner would submit that the presence of the defacto complainant as well as the official witness P.W.3 in the petitioner/accused office as stated by the prosecution was not spoken by the witnesses P.W.4, P.W.7 and P.W.8 and as such, the trap allegedly conducted in the said office is highly doubtful, that P.W.1 himself had admitted that the petitioner/accused did not demand when he met two or three times before the demand made on the date of occurrence and as such, the demand of Rs.3,000/- on 08.03.2007, as projected by the prosecution is highly doubtful and that P.W.1 has given evidence that he went to the respondent police office directly from the office of the petitioner/accused with the money of demand amount of Rs.3,000/- and there was no explanation as to how the P.W.1 had the said amount without any prior demand.

7. The learned Additional Public Prosecutor would submit that the prosecution has established foundational facts of the demand and acceptance of illegal gratification by the petitioner/accused, that the defense has not rebutted the presumption, that the defense version is that P.W.1 and P.W.3 did not come to the office of the petitioner/accused and that while the petitioner/accused climbed the



staircase to go to his office in the first floor, P.W.1 to foist the money in the pant pocket which was thwarted by the petitioner/accused, who tapped away the hand of P.W.1 and the currency notes fell on the ground and P.W.1 was walking away and the petitioner/accused picked up the currency notes and went behind P.W.1 calling his name to hand over the currency to him, that he was apprehended by the P.W.10 Trap Laying officer outside the compound of the petitioner/accused office, that non-examination of the Manager Annamalai is not fatal to the prosecution and that the demand, acceptance and recovery of currency has been proved by the prosecution and not rebutted by the defense.

8.The learned Additional Public Prosecutor would further submit that there are enough materials available on record against the petitioner/accused and hence, he strongly opposed to grant suspension of sentence.

9.This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

10.The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

11.Considering the above facts and circumstances and also the facts that the petitioner is not having any bad antecedents and that the petitioner is in incarceration from the date of judgment i.e., on 03.08.2022, this Court is inclined to suspend the sentence imposed on the petitioner.

12.Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Trichirappalli.

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and



(iii) The petitioner shall appear before concerned Court on all working days at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
12/09/2022

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13/09/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SPECIAL JUDGE,
SPECIAL COURT FOR TRIAL OF CASES UNDER THE
PREVENTION OF CORRUPTION ACT,
TIRUCHIRAPPALLI.
2. THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION WING,
THIRUCHIRAPPALLI.
3. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-9867[I] dated 12/09/2022)

ORDER IN
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IN
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Date :12/09/2022

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