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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.2678 of 2023

B.Pradeep Kumar (61-Y)
S/o.Late Bellu

.. Petitioner / Petitioner

.Vs.

1.Mr.Ganesh
S/o.Late B.Sokkan

2.The Public Prosecutor of Nilgiris
Udhagamandalam.

.. Complainant/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.MP.No.1418 of 2022 in C.A.No.69 of 2022 before the Court of Sessions Division of the Nilgiris District at Udhagamandalam dated 05.01.2023.

For Petitioner : Mr.C.T.Sarasvanan

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.side)
for R2

ORDER

This criminal original petition has been filed challenging the order passed by the Court below in Crl.MP.No.1418 of 2022, dated 05.01.2023 dismissing the application filed for suspension of sentence pending disposal of the criminal appeal.



2.The respondent initiated proceedings against the petitioner for offence u/s.138 of the Negotiable Instruments, 1881 (in short "the NI Act"). The Trial Court by judgment dated 30.11.2022, convicted the petitioner for offence u/s.138 of the NI Act and sentenced him to undergo 6 months simple imprisonment and to pay the cheque amount of Rs.5,00,000/- as compensation within 3 months and in default to undergo 2 months sentence. Aggrieved by the same, the petitioner filed an appeal before the Court below in CrI.A.No.69 of 2022. Pending the appeal, the petitioner also filed an application for suspension of sentence.

3.The Court below dismissed the application filed for suspension of sentence by an order dated 05.01.2023. Aggrieved by the same, the present criminal original petition has been filed before this Court.

4.Heard.Mr.C.T.Sarasvanan, learned counsel for the petitioner and carefully perused the materials available on record.

5.The petition for suspension of sentence was presented on 23.12.2022 and it was taken on file and it was posted for hearing on 3.1.2023. When the matter was taken on 3.1.2023, the Court below found that the learned Judicial Magistrate had suspended the sentence for one month from 30.11.2022. Hence, by the time, the application for suspension of sentence was taken up by the Court below, the period for which the Trial Court had suspended the sentence expired. Hence, the learned Judicial Magistrate had issued a non-bailable warrant against the petitioner. On this ground, the Court below dismissed the application.



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6. Taking into consideration the facts and circumstances of the case and to afford an opportunity to the petitioner, this Court is inclined to dispose of the criminal original petition in the following directions:

(a) The petitioner shall surrender before the Court below on or before 8.9.2023 and shall file a bail application in the pending appeal.

(b) The Court below shall entertain the bail application and shall grant interim bail to the petitioner by imposing necessary conditions for a period of six weeks.

(c) The petitioner is directed to deposit 20% of the compensation amount fixed by the Trial Court within a period of six weeks from the date of surrender.

(d) If the petitioner deposits 20% of the compensation amount as directed by this Court, the Court below shall make the bail order absolute by imposing necessary conditions. And ;

(e) If the petitioner does not deposit the 20% compensation amount as directed by this Court, the interim bail shall be cancelled and the petitioner shall be made to serve the sentence imposed by the Trial Court.

29.08.2023

Index : Yes/No

Internet : Yes/No

KP

Note: Issue order copy on **31.8.2023**

N. ANAND VENKATESH, J.



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To

- 1.The Public Prosecutor of Nilgiris
Udhagamandalam.
2. Court of Sessions Division
of the Nilgiris District
Udhagamandalam.
- 3.The Public Prosecutor
High Court, Madras.

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