



Crl.M.P.No.971 of 2024
in Crl.A.No.98 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2024

PRONOUNCED ON : 25.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.971 of 2024
in
Crl.A.No.98 of 2024

1.Shri.R. Sekar

2.Shri.K. Anwar Hussain

... Petitioners

Vs.

State rep. by:-

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, "C" Block,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai – 600 006.

ECIR No.06/2012/CEZO (AVB)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1)
of the Criminal Procedure Code, seeking to suspend the sentence



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imposed on the petitioners in C.C.No.24 of 2016 passed by the learned Designated Court under Prevention of Money Laundering Act, 2002 / In the Court of Principal Special Judge for CBI Cases / VIII Additional City Civil Court, Chennai, by a judgment dated 11.01.2024 and enlarge the petitioners on bail, pending disposal of the criminal appeal.

For Petitioners : Mr.V.S. Venkatesh

For Respondent : Mr.N. Ramesh,
Special Public Prosecutor

Amicus Curiae : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

*(Order of the Court was delivered by **SUNDER MOHAN, J.**)*

Though we had granted suspension of sentence to the petitioners/appellants on 05.02.2024, we intended to examine the reason assigned by the trial Court for declining the prayer for suspension of sentence, though the petitioners/appellants were convicted and sentenced to imprisonment of three years.

2. The trial Court had dismissed the applications for suspension of sentence on the ground that since the petitioners were not released on bail during trial, they would not be entitled to bail under Section 389 (3)



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of Cr.P.C. The order of the trial Court in the application filed by A1/1st petitioner herein reads as follows:

“Enforcement Directorate has taken notice. Heard. Fine amount paid. Petitioner/A1 is intended to prefer an appeal against Judgment of conviction in C.C.No.24/2016. Petitioner is never arrested either in the investigation or in the trial. Though he is convicted and sentenced to undergo for a period of three years for the offence under Section 4 read with 3 of Prevention of Money Laundering Act, 2002 (as amended) he was not released on bail during the trial. If the petitioner was already released on bail, he is entitled to get the bail under Section 389 (3) of Cr.P.C., but he was not released on bail. Hence, the petition for suspension of sentence deserves to be dismissed.”

3. The order states that the accused were not arrested during the investigation or during the trial. Admittedly, they had also not absconded during the trial. Section 389 (3) of the Cr.P.C., reads as follows:

“389 (3). Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall;

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to



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present the appeal and obtain the orders of the Appellate Court under Sub-Section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.”

4. The above provision uses the expression, 'being on bail' in sub clause 3(i) and 'is on bail', in sub clause 3(ii) and it also states that the Court shall if it is satisfied that the convicted person intends to file an appeal, release him on bail. There cannot be any doubt 'being on bail' means that the accused ought to have executed a bail bond with or without sureties. But the context in which, these expressions have been used in Section 389(3) Cr.P.C., has to be understood to appreciate the issue involved in this matter.

5. Section 88 of the Cr.P.C., empowers the Court to direct a person to whom, the Court is empowered to issue a summons or warrant, and is present in Court to execute a bond with or without sureties. Section 88 of the Cr.P.C. reads as follows:

“88. Power to take bond for appearance: When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the



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case may be transferred for trial.”

6. The above provision is to ensure that the person who has not already executed the bail bond during the investigation can be asked to execute the bond to ensure his appearance before the Court and Section 89 of the Cr.P.C., provides that the Court may direct the arrest of the person who violates the bond and does not appear before the Court. Therefore, these provisions are to ensure only the appearance of the accused during the trial. However, Section 389 (3) of Cr.P.C., does not speak about execution of bonds and in the said provision the expressions, 'being on bail' or 'is on bail', is found.

7. The Hon'ble Supreme Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and Another***, [Misc.Application No.1849 of 2021 in SLP (Crl.) No.5191 of 2021 dated 11.07.2022] held that the Courts need not insist on a bail application while considering the application under Section 88 of the Cr.P.C. The relevant portion reads as follows:

“73(e). There need not be any insistence of a bail application while considering the application under Section 88, 170, 2014 and 209 of the



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Code.”

8. The reading of Section 88 of Cr.P.C., would make it clear that discretion is vested with the Court to require a person to execute a bond for his appearance. This Court in ***Kumar Vs. State of Tamil Nadu***, reported in **2014 (2) LW (Crl) 789**, held that even in private complaints, such as prosecution under Section 138 of the Negotiable Instruments Act, the Courts should take a bond from the accused under Section 88 of the Cr.P.C. This Court also referred to the judgment of the Hon'ble Supreme Court in ***Indian Bank Association and others Vs. Union of India***, reported in **2014(2) LW 400**. The relevant portion reads as follows:

“13. In Private Complaint cases like prosecution under Section 138 of the Negotiable Instruments Act, the accused will appear on summons and the Court should take a bond from him under Section 88 Cr.P.C. The Honourable Supreme Court in *Indian Bank Association and others v. Union of India*, reported in 2014 (5) SCC 590, (A copy of the order has been circulated to all the Judicial Officers on the orders of the Apex Court) has directed the Magistrates to obtain a bond from the accused when he appears. Hereafter, all the Magistrates in the State are required to strictly follow the said direction issued by the Supreme Court. If on the first hearing, if the accused comes unprepared to furnish sureties for the bond, a reasonable time can be given to him to bring the sureties and execute the



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bond. We further direct that a bond under Section 88 Cr.P.C., should be taken in all cases, both summons and warrant cases, where an accused who has not been arrested and released on bail, appears before the Court on summons. This includes even cases under the Prevention of Corruption Act. If the accused absconds during Trial, he can be arrested in execution of non-bailable warrant and remanded to judicial custody and later released on bail. In such cases also he will be entitled to set off under Section 428 Cr.P.C. Therefore, it is necessary for the trial Court Presiding Officers to mention about all these aspects clearly in the judgment itself.”

9.(i) Rule 24 of the Criminal Rules of Practice, 2019 issued by this Court reads as follows:

24. Person accused of a non-bailable offence not been released on bail or anticipatory bail.? On the appearance, on summons, of a person accused of a non-bailable offence, who has not been released on bail or anticipatory bail, the Court may obtain a bond in Judicial Form No.74, with or without sureties, in the event of not remanding the accused into custody.

N.B.:

(1) The Trial Courts are reminded that suspension of sentence under sub-section (3) of section 389 of the Code can be granted only if the accused is on bail at the time of judgment.

(2) Every Trial Court and Appellate Court shall require an accused to execute bail bonds with sureties, after arguments are heard, in Judicial Form No.75 under section 437-A of the Code and such bail bonds shall be in force for six months.”

(ii) Rule 24 speaks about obtaining a bond by the Court with or



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without sureties in Judicial Form No.74, which is as follows:

Judicial Form No.74

(See Rules 22 and 24)

BOND UNDER SECTION 88 CR.P.C.

IN THE COURT OF THE

Case No..... of.....

I,, S/o / D/o / W/o residing at
..... (address), having appeared before this Court on receipt of
summons, do hereby bind myself to attend this Court or any other Court to
which the case may be transferred for trial and to continue so as to attend
until otherwise directed by the Court, and, in case of my making default
herein, I bind myself to forfeit to the State, the sum of Rs.....

Dated this day of 20....

Signature

10. The Note appended to Rule 24 reminds the trial Courts that the suspension of sentence can be granted only if the accused is on bail at the time of judgment and further directs the trial Courts and the appellate Courts to direct the accused to execute bail bonds with sureties after arguments are heard in Judicial Form No.75 under Section 437-A of the Code and that such bonds shall be in force for six months. Judicial Form No.75 reads as follows:

Judicial Form No.75

(See Rule 24-N.B. 2)



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BOND UNDER SECTION 437-A, CR.P.C.

IN THE COURT OF THE

Case No.....

I,, S/o/D/o/W/o residing at ...
..... (address), hereby appearing before this Court for
trial/appeal, do hereby bind myself to appear before the higher Court as
and when such Court issues notice in respect of any appeal or petition
filed against the judgment of this Court, and, in case of my making default
herein, I bind myself to forfeit to the State the sum of Rs.....

Dated this day of 20.

Signature

11. All the above provisions that we have just extracted is to ensure that the accused appears before the Court and participates in the trial. Judicial Form No.75, that we extracted above, however, is to ensure that the accused binds himself to appear before the higher Court as and when such Courts issue notice in respect of any appeal or petition. Such notice would be issued to the accused only in respect of an appeal against acquittal or a revision against acquittal. If the accused prefers any appeal, there is no question of the appellant/accused binding himself to appear before the appellate Court. There may be cases where, after an appeal is preferred, the appellant does not give instructions to his counsels, for which a different procedure is contemplated. In any case, Judicial Form No.75 is valid only for a period of six months and is to be



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obtained by the Courts after the arguments are heard by the Court.

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12. Again the Note to Rule 24 of the Criminal Rules of Practice, 2019 specifically provides that it is for the Court to require the accused to obtain bail bonds. The question is if the Court neither obtains a bond under Section 88 of Cr.P.C., nor obtains bail bonds as noted in the Criminal Rules of Practice in respect of an accused who is not on bail and is at large (free) and the accused has throughout participated in the trial, whether the petition for suspension of sentence can be dismissed, if other conditions under Section 389 (3) of the Cr.P.C., are satisfied. The answer to the question is an emphatic 'No'.

13. The reason for the same is not far to seek. The above procedural requirements are only to ensure the appearance of the accused before the trial Court. If in a given case, the accused has been regularly appearing and participating in the trial and is available at the time of judgment and for some reason, the Court has not insisted on either a bond under Section 88 of the Cr.P.C., or the execution of bail bonds in Judicial Form No.75, as stipulated in the Criminal Rules of Practice, the



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accused cannot be at a disadvantage. No doubt, Section 389 (3) of the Cr.P.C., refers to the accused 'being on bail' for the purpose of seeking suspension of sentence. This has to be understood as 'not in custody' in the given context. We are inclined to say so, since while granting suspension of sentence, it is open to the trial Court to obtain bail bonds with or without sureties and grant suspension of sentence for a limited period to enable the accused to prefer an appeal and it is needless to say that the suspension of sentence need not be considered if the accused refuses to execute the bail bonds with or without sureties as directed by the trial Court. Therefore, in a case where the accused is not in custody when the judgment is pronounced and sentenced to less than three years of imprisonment and where the accused was neither arrested during trial nor was asked to execute bond under Section 88 of Cr.P.C., or execute bail bonds, his request for suspension of sentence, cannot be denied, only for the reason that he has not executed bail bonds earlier. The fact that he is not in custody and the fact that he is willing to execute bail bonds and offer sureties at the time of suspension of sentence, would be the relevant factors for considering suspension of sentence.



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14. As stated earlier, merely because the Court has not required the accused to execute bail bonds, the accused shall not be prejudiced as these provisions are only to ensure appearance and the hyper-technical approach adopted by the trial Court is contrary to bail jurisprudence, besides causing injustice to the accused for no fault of his. Even otherwise, the trial Court had the option to require the accused to execute bail bonds as stipulated under the Criminal Rules of Practice even on the date of judgment. In any case as stated earlier, the suspension of sentence can also be granted subject to the execution of bail bonds with or without sureties.

15. In such a view of the matter, we are of the view that where the Court has failed to either obtain a bond under Section 88 of the Cr.P.C., or bail bonds in Judicial Form No.75, as noted in the Criminal Rules of Practice, and the accused is sentenced to less than three years of imprisonment, the suspension of sentence, cannot be denied. In order to avoid any infraction of the right of the accused to seek suspension of sentence, we deem it appropriate to crystalise the directions issued by this Court and by the Hon'ble Apex Court in the following manner:

(a) When an accused appears before the Court on



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summons for a trial and has neither obtained anticipatory bail nor been arrested and released on bail, the Magistrate shall obtain bond under Section 88 of the Cr.P.C., to ensure his appearance and participation in the trial.

(b) The trial Court, during the course of the trial, after hearing the arguments of the parties may also obtain bail bonds in terms of the note appended to Rule 24 of the Criminal Rules of Practice, which shall be valid for six months.

(c) The trial Court shall not deny the prayer of suspension of sentence on the date of the judgment, merely on the ground that the accused, who is at large (free), has not furnished the bond, but would be well within its powers to obtain the bail bond on the date of the judgment and may suspend the sentence, provided the other conditions in Section 389(3) of the Cr.P.C., are satisfied.

16. It would be pertinent to mention here that some of the trial Courts have been denying the right of the accused, seeking suspension of sentence on the ground that a bond under Section 88 of the Cr.P.C., was



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not executed. Now that we have crystallized the procedure and substantiated the right of the accused to seek for suspension of sentence, it would be appropriate that the present order be circulated to all the trial Courts in the State. Accordingly, the Registry shall place a copy of this order before the Hon'ble Chief Justice, for obtaining appropriate orders in this regard.

[M.S.R., J] [S.M., J]
25.03.2024

Note to office:

Issue order copy by 26.03.2024

Upload the order forthwith

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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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Pre-delivery order in
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