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CrI.O.P.No.11129 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.05.2024

CORAM:

THE HONOURABLE Mr. JUSTICE K.KUMARESH BABU

CrI.O.P.No.11129 of 2024

M/s.Ergo Foam
Rep.by Partner
C.K.Ahamed Nizar
18/108-43, Kinfra Small Industries Park
Plot No.11, Vellaram Kunnu Chundale P.O.,
Kalpetta, Wayanad District
Kerala-673 123.

... Petitioner

Vs.

M/s.Pon Pure Chemical India Private Limited
Rep.by Mr.Jino Antony, Manager-Legal
No.32, H-Block 15th Main Road
Anna Nagar
Chennai 600 040.

...Respondent

Prayer: Criminal Original Petition filed 482 of the Criminal Procedure Code, 1973, to set aside the dismissal order dated 23.04.2024 passed in CrI.M.P.No.12457 of 2024 in C.A.No.313 of 2024 on the file of the learned Principal Sessions Judge, Chennai, as illegal and incompetent by allowing the present Criminal Original Petition.



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For Petitioner : Mr.R.Jayaprakash

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below in Crl.M.P.No.12457 of 2024 in C.A.No.313 of 2024 dated 23.04.2024 dismissing the application filed by the petitioner seeking for suspension of sentence pending disposal of the appeal.

2. The petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act by the learned Metropolitan Magistrate, FTC-IV, George Town, Chennai, through the judgment dated 21.03.2024 and sentenced to pay a fine of Rs.33,18,430/- in default, the partner of the first accused was directed to undergo three months simple imprisonment. Aggrieved by the same, the petitioner filed an appeal in C.A.No.313 of 2024 on the file of the Principal Sessions Judge, Chennai, along with the application seeking for suspension of sentence. The Lower Court dismissed the application mainly on the ground that the petitioner has not surrendered



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before the Court and once conviction warrant has been issued, the sentence cannot be suspended by the trial Court as well as the appellate Court.

Aggrieved by the same, the present petition has been filed before this Court.

3. The learned counsel for the petitioner has relied upon the order of this Court in Crl.O.P.No.7744 of 2024 dated 28.03.2024. A perusal of the said order, it is seen that the this Court had set aside the impugned order, wherein the lower Court had issued conviction of warrant. The above referred case squarely applies to the present case.

4. In view of the above, I am also inclined to set aside the impugned order. Taking into consideration of the facts and circumstances of the case, this Court disposes of the present petition in the following terms:

(a) the petitioner is directed to surrender before the Principal Sessions Judge, Chennai, on or before 20.06.2024 and file a bail application before the concerned Court.



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(b) the petitioner shall deposit 20% of the compensation amount fixed by the trial Court within a period of 60 days, to the credit of C.C.No.2249 of 2018:

(c) the Principal Sessions Judge, Chennai, shall grant interim bail to the petitioner for a period of 60 days;

(d) if the petitioner deposits the compensation amount within the period of 60 days fixed by this Court, the bail order shall be made absolute by imposing necessary conditions; and

(e) if the petitioner fails to deposit the compensation amount as directed by this Court, interim bail order shall stand cancelled and the Court below shall make the petitioner to undergo the sentence imposed by the trial Court.

08.05.2024

Index : Yes / No

Internet : Yes / No

dna

To

1.The Principal Sessions Judge, Chennai.

2.The Metropolitan Magistrate, FTC-IV, George Town, Chennai.

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K.KUMARESH BABU, J.
dna

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