IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2024

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THE HONOURABLE MR. JUSTICE M. NIRMALKUMAR

CRL.MP. No. 11854 of 2024

in

CRL.R.C. No. 1405 of 2024

S.K. Subramanian ..Petitioner

Vs.

State by
The Inspector of Police,
Central Crime Branch,
Chennai.
(Cr.No. 242/2006) ..Respondent

Prayer: Petition to suspend the sentence imposed on the petitioner in Crl.A. No. 205 of 2022 on the file XVI Additional Sessions Judge at Chennai, dated 28.03.2024 confirming the judgment and sentence passed in

C.C. No. 5638 of 2016 on the file of Special Metropolitan Magistrate, CCB cases, Egmore, Chennai dated 30.08.2022 and enlarge him on bail pending revision.

For Petitioner	::	Mr.B. Kumarasamy
For Respondent	::	Mr.A. Damodaran, Addl. Public Prosecutor

ORDER

The petitioner/Accused No.3 in C.C. No. 5638 of 2016 was convicted by the Trial Court by judgment dated 30.08.2022 for the offences under Sections 120(B), 420, 419 r/w 109 IPC and for the offence under Section 120(B) IPC, the petitioner was sentenced to undergo 3 months rigorous imprisonment; for the offence under Section 420 IPC, he was sentenced to undergo 3 years rigorous imprisonment together with a fine of Rs.5000/- carrying a default sentence of 3 months rigorous imprisonment and for the offence under Setion 419 r/w 109 IPC, he was sentenced to undergo 3 months rigorous imprisonment. As against the said conviction and sentence, the petitioner preferred an appeal in Crl.A. No. 205 of 2022 before the XVI Additional Sessions Judge, Chennai and by judgment dated 28.03.2024, the

Sessions Court confirmed the judgment of conviction and sentenced rendered by the Trial Court. Hence, the petitioner has come forward with the revision along with this petition seeking suspension of sentence and bail.

2. The gist of the prosecution case is that the petitioner is the General Manager of Ambadi Enterprises Company, which was involved in Garment Export business as well as in finance. The petitioner, as General Manager of the said company, had granted loan on the security provided by the first and second accused. The first accused is said to be running a company called 'Sportswear'. The first accused in collusion with the petitioner had entered into an agreement with Ambadi Enterprises Company agreeing to execute the orders received on behalf of the company if the company advances loan to purchase raw materials and thereafter, the finished products would be handed over to the de facto complainant company and the de facto complainant company can export the finished products. For this purpose, on 03.10.2000, a business development agreement was entered into between the parties and a third party security

was provided by the fourth accused. The property, which was of lesser value, was shown to be of higher value and fraudulent documents in support of the same were created. According to the prosecution, the petitioner, being the General Manager, in collusion with the other accused, failed to scrutinise the documents properly and based on the property provided as security, the de facto complainant company was cheated of a sum of Rs.1,39,00,000/-. Hence, the complaint came to be lodged.

3. The contention of the learned counsel for the petitioner is that the petitioner is only the General Manager, who is an authorised signatory along with one Viswanathan. There were business transactions between the first and second accused and the de facto complainant company. The petitioner acted only as per the advice of the de facto complainant company's policy and in respect of the property, which was given as security by the fourth accused, legal opinion was obtained and only thereafter, the petitioner had recommended for the Joint Business Development Agreement. According to the learned counsel for the petitioner, the first and the second

accused had defaulted in making payment of loan amounts advanced to them for which the petitioner has been found fault with as if the petitioner had colluded with them in cheating the de facto complainant company. Further, he would submit that the case was registered in the year 2006 and in the year 2008, after the scrutiny of the documents, the petitioner had submitted his resignation and the same was also accepted. However, due to some rivalry, the petitioner has been made as a scapegoat. Further, all the payments to the first and second accused were made only through Bank. Moreover, the petitioner and one Viswanathan are joint signatories to the transaction, but the said Viswanathan has neither been made as a witness nor as an accused. According to the learned counsel for the petitioner, the Trial Court and the Lower Appellate Court failed to consider these aspects and erred in convicting the petitioner.

4. Learned Additional Public Prosecutor submitted that the petitioner along with first and second accused had cheated the de facto complainant company of a sum of Rs.1.39 crores. Accused Nos. 1 to 4, in this case, had furnished a third party property, projecting it to be of higher

value, as security, created fraudulent documents in support of their claim and thereby made the de facto complainant company to part with huge sums of money. The petitioner had raised this point before the Trial Court as well as before the Lower Appellate Court, but both the Courts had negatived the same. He further brought to the notice of this Court that the case was registered in the year 2006, the charge sheet was laid in the year 2016 and the petitioner was convicted in the year 2022. It is a long drawn process and the petitioner is aged abut 74 years with health ailments. He has now surrendered and he is in Central Prison, Puzhal.

5. Considered the submissions and perused the materials on record.

6. The petitioner as the General Manager of the de facto complainant company participated in the business arrangement between the first accused, second accused and the de facto complainant company. In this case, all the payments to first and second accused made through Bank. It is not the case of the prosecution that there was reverse flow of money from the first and second accused to the petitioner. The petitioner had resigned

from the company in the year 2008. At that time, the complaint was pending with the respondent and the de facto complainant company had allowed the petitioner to resign. Now, the petitioner is 74 years old and he has got arguable points in the revision. Hence, this Court is inclined to suspend the sentence imposed on the petitioner and enlarge him on bail.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

> (a) The petitioner/accused 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 Metropolitan Magistrate, CCB Cases, Egmore, Chennai.
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> (b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their

identities.

(c) The petitioner shall appear before the Trial Court once in three months on the first working day of English Calendar month at 10.30 a.m., until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

19.09.2024

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(Note to Office: Issue copy on

20.09.2024)

M. NIRMALKUMAR,J.

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To

1. The Special Metropolitan Magistrate,
   CCB Cases, Egmore, Chennai.

2. The Inspector of Police,
   Central Crime Branch,
   Chennai.
3. The Superintendent,
   Central Prison, Puzhal,
   Chennai.
4. The Public Prosecutor
   High Court, Madras.

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