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*Crl.M.P.No.15427 of 2024
in Crl.R.C.No.1881 of 2024*

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SUNDER MOHAN, J.

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed by the learned Metropolitan Magistrate, FTC-II, Egmore at Allikulam in C.C.No.292 of 2016 dated 28.02.2019 and confirmed by the VII Additional Judge, City Civil Court, Chennai in Crl.A.No.129 of 2019 on 26.08.2022 and enlarge the petitioner on bail, pending disposal of the above Criminal Revision Case.

2. The case of the prosecution is that the petitioner had issued two cheques, one for Rs.3,07,800/- and another for Rs.3,29,000/- towards discharge of his liability to the respondent and when the said cheques were presented for negotiation, the same was returned with endorsement “funds insufficient” and in spite of statutory notice, the petitioner did not make the payment.



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3. The petitioner was convicted by the trial Court for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and to pay a sum of Rs.12,73,600/- towards compensation to the complainant within a period of one month, in default, to undergo simple imprisonment for another three months. On appeal, the said conviction and sentence was confirmed by the lower Appellate Court. Therefore, challenging the concurrent finding of the courts below, the petitioner has preferred revision and pending revision, he seek for suspension of sentence.

4. The learned counsel for the petitioner contended that the cross examination of PW1 would show that the petitioner had rebutted the statutory presumption and that the courts below had erroneously found the petitioner guilty of the offences under Section 138 of Negotiable Instruments Act and seeks for suspension of sentence.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) for the respondent and perused the records.



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6. On perusal of the judgment of the courts below and the grounds raised by the petitioner, this Court is of the considered view that the petitioner has raised substantial grounds in the above revision. The petitioner had also deposited 20% of the cheque amount to the credit of C.C.No.292 of 2016 during the pendency of this appeal and is willing to deposit additionally , 30% of the cheque amount.

7. Accordingly, this Criminal Miscellaneous Petition is allowed and till the disposal of the Criminal Revision case, the sentence imposed upon the petitioner/accused by the trial Court, is suspended on the following conditions :

(i) The petitioner/accused is directed to deposit 30% of the cheque amount i.e.,Rs.3,82,080/- [Rupees Three Lakhs Eighty Two Thousand and Eighty only], within a period of four weeks from the date of receipt of a copy of this order;

(ii) On such deposit being made, the trial Court shall redeposit the said amount in a Fixed Deposit Account, in any one of the Nationalized Banks, renewable thereafter periodically. The disbursal of this amount shall be decided at the culmination of the Criminal Revision Case;



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(iii) Thereafter, the sentence of imprisonment alone imposed on the petitioner/accused shall be suspended, on his executing a bond a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of Metropolitan Magistrate, FTC-II at Egmore, Allikulam, Chennai;

(iv) The petitioner and 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 and mobile numbers to ensure their identity;

(v) The petitioner shall appear before the trial Court on the first working day of every 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 any 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; and

(vi) On the failure of the petitioner/accused, depositing the said amount, it is open to the trial Court to commit the petitioner/accused into custody for undergoing the sentence.

08.11.2024

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Issue order copy by 13.11.2024
Upload the order copy forthwith.



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rgr

To

1.The Metropolitan Magistrate,
FTC-II, Egmore at Allikulam,
Chennai.

2.The VII Additional Judge,
City Civil Court,
Chennai

3.The Public Prosecutor,
High Court, Madras.

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