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Crl.M.P.No.16461 of 2024 in Crl.A.No.1450 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

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THE HONOURABLE MR.JUSTICE SHAMIM AHMED

Crl.M.P.No.16461 of 2024

in

Crl.A.No.1450 of 2024

Shantilal Jain

... Petitioner

/vs/

State represented by:

Deputy Superintendent of Police,
CBI/SCB/Chennai.

(Crime No.R.C.No.12/S/2009)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under section 430(1) of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to suspend the sentence imposed in C.c.No.5 of 2011, dated 17.10.2024 by the XI Addl. Special Judge for CBI Cases (Banks and Financial Institutions), Chennai and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner

... Mr. S.Uma Nachiar

For Respondent

.... Mr.K.Sreenivasan,
Spl. Public Prosecutor for CBI Cases

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed upon the petitioner, by judgment and order



dated 17.10.2024 passed in C.C.No.5 of 2011 by the learned XI Addl.

Special Judge for CBI Cases – (Banks and Financial Institution), Chennai

and to enlarge the petitioner on bail.

2. The petitioner, who was ranked as A3 in C.C.No.5 of 2011 was convicted and sentenced by the trial court as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A3	U/s.120 B of IPC, r/w.sec.419, 420, 467, 468 and 471, r/w.467 IPC and u/s.13 (1) (d) r/w.13 (2) of the Prevention of Corruption Act, 1988	To undergo 3 years RI and to pay a fine amount of Rs.5000/-, in default in payment, to undergo SI for six months
	U/s.420, 467, 468 and 471 r/w.467 (two counts)	To undergo 3 years RI on each count of every section (8 x 3=24) along with fine of Rs.2,500/- on each count of every section (8 x 2500 = 20,000), in default, to undergo, 6 months of SI on each count of each section (8x 6 = 48 months)

The substantive sentence of imprisonments are ordered to run concurrently.

Challenging the above conviction and sentence, the petitioner/A3 has filed the above Criminal Appeal along with the instant miscellaneous petition, seeking suspension of sentence and bail.



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3. The case of the prosecution is that during the year 2004-2007, the petitioner/A3 colluding with the co-accused A1, A2, A4, A5, A6, A7 and A8 hatched a criminal conspiracy, pursuant thereto, they impersonated the deceased Mutha Bhawarlal to commit the offences by misusing his PAN card and also prepared forged documents such as financial statements, income tax returns and property documents in the names of A2 and A3 and his mother and based on the forged documents, they obtained credit loan facilities from Dena Bank to the tune of 9 lakhs, 7 lakhs and 40.64 lakhs. Thus ultimately all have cheated the bank by causing loss with their respective corresponding gains.

4. The learned counsel for the petitioner/appellant submitted that the petitioner is innocent and he is nothing to do with the commission of the offence. The judgment of the trial court is against law, weight of evidence and opposed to all probabilities of the case. The findings of the trial court are contrary to the evidence on record let in by the prosecution. It ought to have found the appellant/petitioner is not guilty of all the charges in view of the overwhelming evidence in favour of the appellant. The trial court regrettably erred in not appreciating the oral as well as documentary evidence in the proper perspective which stood in support of the Appellant to prove his



innocence. It failed to consider that there is no iota of evidence let in by the prosecution to prove the alleged offence. It wrongly concluded with regard to the charge of criminal conspiracy against appellant/A3 when there was no evidence let in by the prosecution for the alleged involvement of Appellant/A3 with the rest of the accused in the alleged offence. Hence the essential ingredients for the charge under section 120B IPC gets vitiated and stands unproved. There is no evidence to elicit that the appellant used any forged documents and he had the knowledge of the fact that his documents were used by his brother/A1. For conviction u/s.120B IPC, the prosecution must demonstrate that there was a clear agreement between two or more persons to commit an unlawful act.

5. He further submitted that the trial court framed specific charge u/s.420, 467, 468 and 471 IPC against the A7 and A8 apart from the charge framed u/s.120B but conveniently acquitted the above mentioned both the accused from this case who said to have played a vital role in the alleged offences. Similarly, the appellant should be evaluated under the same criteria, as he has not engaged in any alleged offences and he has been wrongly implicated. There is no incriminating evidence to prove that the appellant/A3 for the offence u/s.471 of using a forged documents as genuine. The trial



court failed to consider pivotal Handwriting Expert Evidence (GEQD).

Handwriting expert evidence plays a crucial role in cases where the authenticity of documents is in question. In this case, the Handwriting expert, Mr.Bhosale was examined as PW24 and marked his opinion and reasons as Ex.P.154 which reveals that this accused has not signed the questioned documents. Despite the submission of comprehensive and credible expert analysis, the Trial Court failed to appreciate the evidence in its judgment.

6. It was further argued by the learned counsel for the petitioner/appellant that due to pendency of the criminal cases before this High Court, there is a blinking chance that in the near future, this appeal will be finally heard and decided. He further submit that there are arguable points in this appeal and the petitioner has fair chance of success in this Criminal Appeal. Thus, he prayed for suspension of sentence till the disposal of this Criminal Appeal.

7. The petitioner/appellant has remitted the fine amount of Rs.25,000/- and he was released on bail by the trial court on his executing own bond and his sentence of conviction was suspended for a period of six weeks from the



date of judgment till 29.11.2024 in Crl.M.P.No.7348 of 2024 by the trial court.

8. Several other submissions in order to demonstrate the falsity of the allegations made against the Appeal have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the appellant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The appellant undertakes that in case he is released on bail, he will not misuse the liberty of bail and will cooperate in disposal of appeal.

9. Learned Special Public Prosecutor, CBI Cases appearing for the respondent has opposed the argument advanced by the learned counsel for the Appellant and submits that the judgment passed by the court below is as per the law after considering the entire evidence, thus the relief sought by the Appellant at this stage be refused by this Court.



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10. Considering the arguments advanced by the learned counsel for the petitioner as well as the learned Govt. Advocate (crl.side), this court is of the view that the trial court has failed to appreciate the evidence on record and the judgment was passed without considering the entire materials placed before it and during trial the appellant was also on bail.

11. Further, it is observed that when the accused has been under incarceration for sometime and when there are points in the appeal, which favour the accused, then the court should not shy from granting suspension of sentence, as the liberty of the individual would be at stake if the appeal results in acquittal at a later point of time. In this regard, the decision of the Hon'ble Supreme Court of India in the case of ***Rabi Prakash Vs. The State of Odhisha reported in 2023 Live Law (SC) 533*** is of relevance.

12. The petitioner has raised substantial grounds in the Appeal which require detailed appraisal. Further, the Appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner/appellant is entitled to the relief of suspension of sentence and bail.

13. Accordingly, the relief of suspension of sentence and bail is granted



to the petitioner/appellant namely Shanthilal Jain, Son of Vijayraj Jain on the following conditions:

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- (i) The petitioner/appellant shall surrender before the XI Addl. Special Judge for CBI Cases – (Banks and Financial Institution), Chennai within three weeks from the date of receipt of a copy of this order and on such surrender, the petitioner/appellant is ordered to be released on bail on his executing a personal bond along with two sureties for a sum of Rs.15,000/- each subject to furnishing undertaking that he will co-operate in the hearing of the present Appeal.
- (ii) The petitioner/appellant and sureties shall affix their photographs and Left Thumb Impression in the bond and the abovesaid Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;
- (iii) The realization of fine, if any, shall also remain suspended during the pendency of the present Appeal.

14. On acceptance of his bail bond and sureties, the learned trial court shall transmit photostat copies thereof to this Court for being kept on records of this Appeal.

15. With the above directions, this Criminal Miscellaneous Petition is



ordered.

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22.11.2024

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To

1. The XI Addl. Special Judge for CBI Cases – (Banks and Financial Institution), Chennai.
2. Deputy Superintendent of Police,
CBI/SCB/Chennai.

SHAMIM AHMED, J.



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Crl.M.P.No.16461 of 2024 in Crl.A.No.1450 of 2024

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Crl.M.P.No.16461 of 2024
in
Crl.A.No.1448 of 2024

22.11.2024