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CrI.M.P.No.16452 of 2024 in CrI.A.No.148 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

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THE HONOURABLE MR.JUSTICE SHAMIM AHMED

CrI.M.P.No.16452 of 2024

in

CrI.A.No.1448 of 2024

Tr.A.R.Viswanathan

... Petitioner

/vs/

State represented by:
The Inspector of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption,
Chennai 600 028.

... Respondent

Prayer : Criminal Miscellaneous Petition filed under section 430(1) of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to suspend the sentence imposed in the judgment dated 07.11.2024 in C.C.No.16 of 2014 (on the file of the Special Court for the Cases Under Prevention of Corruption Act, at Chennai) and release the petitioner on bail.

For Petitioner

... Mr. C.Vijaya Kumar

For Respondent

.... Mr.K.N.D.Mukilan,
Govt. Advocate (crl.side)



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ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed upon the petitioner, by judgment and order dated 07.11.2024 passed in C.C.No.16 of 2014 by the learned Special Judge, Special Court for the cases under Prevention of Corruption Act, Chennai and to enlarge the petitioner on bail.

2. The petitioner, who was the sole accused in C.C.No.16 of 2014 was convicted and sentenced by the trial court as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.7 of Prevention of Corruption Act, 1988.	To undergo 4 years RI and to pay a fine of Rs.50,000/-, in default in payment of fine, to undergo 3 months SI
	U/s.13(2), r/w.13(1)(d) of Prevention of Corruption Act, 1988	To undergo five years RI and to pay a fine of Rs.50,000/-, in default in payment of fine, to undergo 6 months SI

The substantive sentence of imprisonments are ordered to run concurrently. Challenging the above conviction and sentence, the petitioner 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 the petitioner, who is a Government Servant employed as Assistant Engineer in Chennai Corporation has demanded illegal gratification from the defacto complainant on 10.01.2012 for favouring him in not demolishing the illegal construction put up by the defacto complainant without obtaining proper approval from the Corporation and subsequently on 23.01.2012, when the defacto complainant visited the office of the petitioner, he again demanded him to give Rs.10,000/- as bribe amount for not demolishing the illegal construction put up by him. Accordingly, on 24.01.2012, in the presence of witness R.Murthy the petitioner herein received bribe amount of Rs.10,000/- as demanded by him from the defacto complainant. Thus, the petitioner herein, by abusing his official position, has committed the offence of criminal misconduct punishable under section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act.

4. The learned counsel for the petitioner submitted that the petitioner is an innocent and the case was foisted on 24.01.2012 based on the false complaint of the witness R.Murthy. For the disputed property of the complainant, neither any building permission was obtained, nor any property



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tax was paid till 09.05.2012 and for the first time property tax was paid only on 10.05.2012 amounting Rs.4000/-. The petitioner was transferred only on 19.12.2011 from Division No.173, Raja Annamalaipuram and assumed office at Division No.180, Taramani and 182 Thiruvananthapuram. Since the petitioner assumed office newly on 19.12.2011 at 182 Thiruvananthapuram, the petitioner had no knowledge about the disputed property. The petitioner did not send the witness Raghu on 06.01.2012 to meet the witness R.Murthy and he did not know anything about witness R.Murthy and the petitioner and the said witness were not known to each other. Neither on 10.01.2012, nor on 23.01.2012 the witness R.Murthy did not meet the petitioner and the petitioner did not demand any money. On 24.01.2012, the petitioner did not demand any money from the witness R.Murthy and also did not receive any money from the witness R.Murthy. The complaint and trap proceedings are false and imaginary. There was no trap on 24.01.2012, as alleged by the prosecution. The police arrested the petitioner on the evening of 24.01.2012 and took him to the DVAC Office and falsely prepared the complaint, registered the FIR and also cooked up witnesses and took the petitioner to the residence of the learned Judge on the night of 24.01.2012 and produced the petitioner at 7.30 p.m., and submitted the complaint in the case and the FIR. The case was foisted against the petitioner in order to suppress the illegal



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activity of the newly elected Councillor of Division 182, namely one Usha Kumar, her husband Kumar and their men, who belong to the then ruling party and the petitioner was made as a scape goat. The petitioner is totally innocent and he had been working in Corporation of Chennai from 03.05.1993 and till 24.01.2012 and during 19 years of his service, he had unblemished record of service.

5. To prove the prosecution case, PW1 to PW13 were examined and documents Exhibits P1 to P17 and Mos 1 to 3 were marked. On the side of the petitioner, defence witness DW1 was examined and Exhibits D1 to D9 were marked. The bare perusal of the evidence of prosecution witnesses and the documents produced by the prosecution clearly revealed that the complaint Ex.P.2 was given by PW2-R.Murthy with false information and allegations and the complaint was cooked up in the Office of the DVAC and the petitioner was arrested in the evening of 24.01.2012 and the case was foisted and the petitioner was produced before the learned Judge on 24.01.2012 at 7.30 p.m. Since the complaint Ex.P.2 was cooked up and FIR Ex.P-15 foisted on the evening of 24.01.2012, both the complaint and FIR are submitted before the learned Judge, only when the petitioner was produced at 7.30 p.m. There are fundamental flaws, lacunas, incurable defects and



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bundle of contradictions in the prosecution case. Factually and legally the prosecution case cannot be sustained. The prosecution miserably failed to prove the case beyond reasonable doubt. Further the prosecution miserably failed to prove neither the demand of money by the petitioner from PW2-R. Murthy nor receipt of money by the petitioner from PW2-R. Murthy. Hence the burden of rebutting the presumption stipulated u/s.20 of the Prevention of Corruption Act, 1988 did not arise in the case. The petitioner through the cross examination of prosecution witnesses, examination of defense witnesses and from defense exhibits D1 to D8 proved that the case on hand is a cooked up and false case. Though the petitioner need not prove his defense, from the Cross Examination of prosecution witnesses PW1 to PW13 and on examination of defence witness DW1 and from defence Exhibits D1 to D8, the petitioner proved his defence. The learned Special Judge without fairly and properly considering the evidence available on records, in a biased and perverse manner convicted the petitioner.

6. He further submitted that the petitioner being a cardiac patient, affected with kidney disease and undergone Right Superior Parathyroid Adeno Carcinoma surgery on 23.10.2024 and the copy of the medical records are produced for the consideration of this Court. The petitioner from



the date of his confinement in Central Prison, Puzhal on 07.11.2024 has been treated in prison hospital. If the petitioner is not released on bail, he may not be able to get proper treatment in Dr.Mehta's hospital where he had undergone surgery on 23.10.2024.

7. It was further argued 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.

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

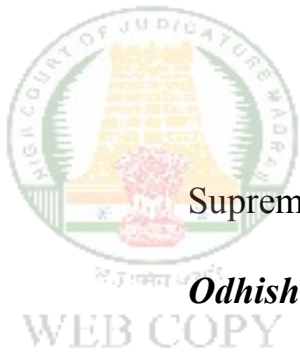


case he is released on bail, he will not misuse the liberty of bail and will cooperate in disposal of appeal.

9. Learned Govt. Advocate (crl.side) appearing for the respondent has opposed the argument advanced by the learned counsel for the Appellant and submits that the judgments 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.

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 A.R.Viswanathan S/o.K.Ranganathan on the following conditions:

- (i) 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 before the learned Special Judge, Special Court for the case under Prevention of Corruption Act, Chennai 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



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during the pendency of the present Appeal.

14. On acceptance of his bail bonds 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.

22.11.2024

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To

1. The Special Judge, Special Court for the case under Prevention of Corruption Act, Chennai – 104.
2. The Inspector of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption,
Chennai 600 028.
3. The Superintendent,
Puzhal Central Prison I,
Puzhal, Chennai.

SHAMIM AHMED, J.

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