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Crl.M.P.Nos.16532 & 16534 of 2024 in Crl.R.C.No.2009 of 2024

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SUNDER MOHAN, J.

These Criminal Miscellaneous Petitions have been filed by the petitioner, seeking to suspend the sentence imposed on the petitioner/accused in Crl.A.No.22 of 2020 dated 22.09.2023 by the learned V Additional District and Sessions Judge, Coimbatore confirming the judgment dated 17.12.2019 in C.C.No.889 of 2017 passed by the learned Judicial Magistrate/FTC-2 at Magisterial Level, Coimbatore and enlarge the petitioner on bail pending disposal of the above revision and to exempt the petitioner from surrendering before the Trial court, pending disposal of the above revision.

2.It is the case of the respondent/complainant that towards discharge of liability, the petitioner had issued a cheque for a sum of Rs.8,50,000/-; that when the cheque was presented for collection, it was returned for the reason “Funds Insufficient” and that in spite of statutory notice issued by the



respondent, the petitioner did not make any 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 six months simple imprisonment with fine of cheque amount including interest at the rate of 6% p.a. from the date of issuance of cheque, in default, to undergo three months simple imprisonment. On appeal, the said conviction and sentence was confirmed by the lower Appellate Court.

4.The learned counsel for the petitioner would submit that the Courts below had not considered the fact that there is no legally enforceable debt; that the respondent had not established his capacity to lend such a huge sum and that the petitioner had rebutted the statutory presumption. The learned counsel would further submit that the petitioner is ready to deposit 50% of the cheque amount to show his bonafides.

5.Heard the learned counsel appearing on behalf of the respondent.



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6.Considering the above submissions made by the learned counsel for the petitioner that there are arguable points in the above revision which requires consideration and in view of the offer to deposit 50% of the cheque amount, this Court is inclined to suspend the sentence and exempt the petitioner from surrender before the Trial Court on the following conditions till the disposal of the criminal revision case.

(i) The petitioner/accused is directed to deposit 50% of the cheque amount *i.e.*, Rs.4,25,000/- [Rupees Four Lakhs Twenty Five Thousand 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 the Judicial Magistrate/FTC-2 at Magiserial Level, Coimbatore;

(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



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(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.

7.In the result, the criminal miscellaneous petitions are ordered.

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