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Crl.M.P.No.19880 of 2023 in Crl.R.C.No.2202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.19880 of 2023
in Crl.R.C.No.2202 of 2023

Ambrose,
S/o.Susai Manickam

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
J-7, Velachery Police Station,
Velachery, Chennai.
(Cr.No.963/2019).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) Cr.P.C., to suspend the sentence imposed on the petitioner in C.C.No.267 of 2022 dated 24.04.2023 on the file of learned XVIII Metropolitan Magistrate at Saidapet, Chennai which was confirmed by the learned VII Additional District cum Sessions Judge at Chennai in Crl.Appeal No.289/2023 by judgment dated 13.09.2023, and enlarge the petitioner on bail pending disposal of the above Criminal Revision Petition.

For Petitioner : Mr.S.Amarnath

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)

ORDER



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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in C.C.No.267 of 2022, dated 24.04.2023 on the file of the XVIII Metropolitan Magistrate Court at Saidapet, Chennai (Trial Court) which was confirmed by the learned VII Additional Sessions Judge at Chennai (lower appellate Court) in Crl.A.No.289 of 2023 by judgment, dated 13.09.2023 and enlarge the petitioner on bail pending disposal of the above Criminal Revision Petition.

2.The petitioner was tried along with the other accused/A2 for offence under Section 381 of IPC. On conclusion of trial, the trial Court acquitted A2 from the charges levelled against him, but convicted the petitioner for offence under under Section 381 of IPC and sentenced to undergo two years imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months Simple Imprisonment. Challenging the same, the petitioner filed Crl.A.No.289 of 2023 before the lower appellate Court. The lower appellate Court *vide* judgment, dated 13.09.2023 dismissed the appeal confirming the judgment of the trial Court. Challenging the same, the present Criminal Revision Case and the Suspension of Sentence.



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3.The case of the prosecution is that the defacto complainant/PW1 is an employer of CMS Connecting Commerce who is engaged in the business of loading of money in ATMs centre. On 19.12.2019, PW1 and PW10 along with Peer Mohammed, a Security, received Rs.87 lakhs in cash from the company for filling up ATMs at Chennai and went in a silver colour Xylo car bearing Reg.No.TN 07 CH 3733 driven by the petitioner. Initially, they loaded around Rs.35 lakhs in various ATMs. On the same day, at about 05.00 p.m., they went to to Vijaya Nagar, 1st Main Road, Vijaya Bank ATM. When they were loading ATM of Vijaya Bank, the petitioner and one Manimaran who was A2 during the trial with an common intention had driven away the said car with cash of Rs.52 lakhs. Since they were unable to be traced out, a complaint (Ex.P1) was lodged to PW11. PW11, the Inspector of Police received the complaint (Ex.P1), registered FIR in Crime No.963 of 2019 (Ex.P13) for offence under Section 381 r/w 34 of IPC, visited the scene of occurrence, drew rough sketch (Ex.P14), prepared observation mahazar (Ex.P13) in presence of the witnesses. On on information, arrested the petitioner in presence of PW5 and PW6 on 22.12.2019. On confession of the petitioner, PW11 went to the relative



house of the petitioner at Vyasarbadi and seized the cash of Rs.32,40,000/- and thereafter, they had gone to another relative house of the petitioner at Shastri Nagar, Adyar and seized cash of Rs.19,08,250/-. The Xylo car found parked under the bridge near R.K.Nagar, Chennai and the same was seized as case property (MO1). Thereafter, A2 in this case was arrested on 26.12.2019 in presence of PW7 and PW8 and his confession recorded. Then, the employees of CMS Connecting Commerce examined and later, on transfer of PW11, PW12 took up further investigation and on completion of investigation, filed charge sheet before the trial Court.

4.During trial, on the side of the prosecution, twelve witnesses examined as PW1 to PW12 and fourteen documents marked as Exs.P1 to P14 and Xylo Car bearing Reg.No.TN 07 CH 3733 marked as material object MO1. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

5.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case. The specific case of the prosecution is that PW1, PW10 and one Peer Mohammed are the three persons who had



gone in the car driven by the petitioner. On the date of occurrence, from the morning, they were loading cash in various places and lastly, at Velachery, from there, the car was found missing. It is the case of the prosecution that PW1 and PW10 were loading the cash inside the ATM centre which took some time. The said Peer Mohammed and the petitioner were stationed outside. At that time, the petitioner is said to have driven the car with cash, but the said Peer Mohamed not examined as witness. In this case, PW4 is the Officer of CMS Connecting Commerce who categorically stated that there will be records maintained for inward and outward movement of the cash in the car and in each ATM centre, the loading of cash will be recorded in the Register. None of the registers marked in this case.

6.PW4 admits that GPS would be installed in the vehicles of the CMS Connecting Commerce which would show the movement and position of the car. In this case, no GPS produced. No CCTV recordings which are available in the ATM produced. Added to it, the mahazar witnesses in this case not supported the case of the prosecution. Further, in this case, the seizure and recovery of the cash are made from the relatives' house of the petitioner at Vysarbadi and Shastri Nagar, Adyar, but none of the relatives



examined in this case. In view of the same, the seizure and recovery becomes doubtful. The specific case of the petitioner is that for audit purpose and for accounting, the CMS Connecting Commerce had some hitches and they need sometime to reconcile and report, for that purpose, the above case registered and the petitioner made as scapegoat. In this case, A2 was acquitted, against which, no appeal filed. The only overtact projected against the petitioner is that the cash and car seized on the confession of the petitioner which has not proved in the manner known to law and the same was also not properly considered by the trial Court as well as the lower appellate Court. The petitioner surrendered before the trial Court on 11.01.2024 and now, he is confined in the Central Prison, Puzhal. Hence, prays for suspension of sentence and bail.

7.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that in this case, on the complaint of PW1, FIR (Ex.P13) registered by PW11. Thereafter, PW11 took up the investigation, immediately visited the scene of occurrence, recorded the statement of witnesses present in the scene of occurrence, drew rough sketch (Ex.P14), prepared observation mahazar (Ex.P12). PW2, PW3



and PW4 are the employees of CMS Connecting Commerce who stated about the procedure followed and the cash found missing along with the car and seizure of the same. PW1 and PW10 are the witnesses who had gone along with the petitioner and Peer Mohamed Ansari and they stated about missing of car with cash. PW5 and PW6 are the witnesses for arrest and confession of the petitioner. PW7 and PW8 are the witnesses for arrest and confession of A2. PW9 is an independent witness for observation mahazar and rough sketch. PW11 and PW12 are the investigating officers. Due to timely action of the Police, almost all the entire amount seized within a short period. Except Rs.51,750/-, Rs.51,48,250/- seized out of Rs.52,00,000/-. The trial Court as well as the lower appellate Court had rightly convicted the petitioner. Hence, prays for dismissal of this petition.

8.This Court considered the submissions and perused the materials available on record.

9.In this case, PW1 and PW10 are the officials from CMS Connecting Commerce who accompanied the petitioner who is a driver of the car with



cash to load money in ATM along with Peer Mohammed Ansari who is a security person. When PW1 and PW10 were loading cash in ATM, the petitioner and Peer Mohamed Ansari were stationed outside. The said Peer Mohammed Ansari not examined as witness. After forty minutes, PW1 and PW10 came out and found the car missing. What had happened to Peer Mohamed Ansari, who is a crucial witness in this case and why he has not been examined, no explanation given. PW2, PW3, PW4 are the witnesses from CMS Connecting Commerce who clearly stated about the procedure of unloading and loading of cash in ATM Centre and taking the money in the vehicle from the office and maintenance of register. But in this case, no register produced or seized to show what was the amount which was loaded in each ATM and what was the money left in the car.

10.PW4 categorically stated that all the cars of CMS Connecting Commerce fitted with GPS, but no GPS seized or produced in this case. No CCTV recordings from any of the ATM produced. Likewise, the huge cash of Rs.51,48,250/- is said to have seized from the houser of the petitioner's relatives at Vyasarbadi and Shastri Nagar, Adyar. But they have neither shown as accused nor cited as witness. The case projected against the



petitioner is on the basis of confession, recovery and seizure, for which, PW5 and PW6 examined, but they have not supported the case of the prosecution. Hence, the vital link snapped in this case. In view of the same, the case against the petitioner becomes doubtful. The conviction and sentence of the trial Court as well as the lower appellate Court needs reconsideration. Admittedly, A2 was acquitted by the trial Court, against which, no appeal filed by the prosecution.

11.In view of the above, this Court is inclined to suspend the sentence of the petitioner till the disposal of the main criminal revision. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal revision and the petitioner 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 trial Court.

12.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the criminal revision and if he is not able to appear before the



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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.

13.Accordingly, this Miscellaneous Petition is ordered.

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To

- 1.The VII Additional Sessions Judge,
Chennai.
- 2.The XVIII Metropolitan Magistrate, Saidapet,
Chennai.
- 3.The Inspector of Police,
J-7, Velachery Police Station,
Velachery, Chennai.
- 4.The Superintendent of Police,
Central Prison, Puzhal.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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