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Crl.M.P.Nos.828 & 827 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.Nos.828 & 827 of 2024
in Crl.R.C.No.99 of 2024

Bharath Kumar Jain

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
SPE : CBI : EOW : Chennai.

... Respondent

PRAYER in Crl.M.P.No.828 of 2024: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., pleaded to suspend the sentence imposed on the petitioner in C.C.No.5195 of 2011 by an order dated 30.12.2016 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Allikulam, Chennai and convicted in Criminal Appeal No.14 of 2017 on the file of the learned XX Additional Sessions, City Civil Court, Chennai by a judgment dated 17.11.2023 and release the petitioner on bail pending pending disposal of the criminal revision.

PRAYER in Crl.M.P.No.827 of 2023: Criminal Miscellaneous Petition filed under Section 482 of Cr.P.C., pleaded exempt the petitioner from surrendering before the trial Court in C.C.No.5195 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Allikulam,



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Chennai, by a judgment dated 30.12.2016 pending disposal of the criminal revision.

For Petitioner : Mr.R.John Sathyan, Senior Counsel
for Mr.L.Murali Krishnan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed by the petitioner, seeking suspension of sentence and exemption from surrendering before the trial Court, pursuant to the order imposed by the learned Additional Chief Metropolitan Magistrate, Egmore, in C.C.No.5195 of 2011 dated 30.12.2016, which is confirmed by the learned XX Additional Sessions, City Civil Court, Chennai by a judgment dated 17.11.2023.

2. The conviction and sentence imposed against the petitioner/accused is as follows:-

<i>Under Section</i>	<i>Sentence</i>
409 IPC	two years rigorous imprisonment and a fine of Rs.10,000/-, in default, to undergo two months simple imprisonment.
420 IPC	two years rigorous imprisonment and a fine of Rs.10,000/-, in default, to undergo two months simple imprisonment.



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<i>Under Section</i>	<i>Sentence</i>
The Sentences shall run concurrently	

3. Mr.John Sathyan, learned Senior Counsel for the petitioner/accused submitted that a case of loss in business and non-repayment of loan has been falsely projected as a case of cheating and criminal breach of trust. He further submitted that there is absolutely no case of cheating and the trial Court failed to take into consideration the periodic inspection conducted by the Bank Officials and without properly analysing the evidence on record has found the accused guilty. He also submitted that the trial Court fails to see that out of the loan availed of Rs.19.10 Crores, the Bank had also realised Rs.15.05 Crores from the sale of the property given as collateral security and there had been no evidence of ingredients of cheating.

4. Mr.K.Srinivasan, learned Special Public Prosecutor for CBI appearing for the respondent submitted that it is the case where the petitioner/accused, who is the proprietor of the Jewellery shop, had approached Indian Overseas Bank, Sowcarpet Branch, Chennai and obtained 40 Gold Loans from 01.02.2008 against primary security of gold jewellery and collateral security of a land and out of which, he has not repaid 18 gold



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loans which were due between 06.03.2008 and 29.12.2008 and closed his Jewellery shop after removing most of the gold except 22552.4 grams of gold in the locker and later, filled the show room with spurious/fake ornaments and had defrauded the Bank to the tune of Rs.19.10 Crores. However, the Bank realised Rs.15.05 crores from the sale of the property given as collateral security and thereby, caused physical loss to 4.04 Crores to the Bank. He also submitted that the Courts below after properly analysing the evidence on record, had found the accused guilty for the offence. He further submitted that the petitioner has absconded and his whereabouts are also not known, hence, he opposed for grant of suspension of sentence and exemption from surrendering before the trial Court.

5. In reply, the learned Senior Counsel for the petitioner reiterated that a case of loss in business and non repayment of loan has been projected as case of cheating. He further submitted that the petitioner was on bail during trial and he has not misused the liberty and is ready to surrender before the trial Court and furnish sureties. He also submitted that the petitioner has filed an Affidavit of Undertaking stating that to show his bonafide, he is ready to deposit Rs.50 lakhs to the credit of C.C.No.5195 of



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2011 before the trial Court and he is also ready to deposit the original title deeds of immovable property worth about Rs.1.5 Crores before the trial Court. Hence, he prayed that the petitioner may be exempted from surrendering before the trial Court and the sentence imposed against the petitioner/accused may be suspended. In support of his contention, the learned Senior Counsel for the petitioner/accused, relied on the decision of this Court in *Easwaramurthy vs. N.Krishnaswamy* reported in *2006 scc Online Mad 1231* and sought for exemption from surrendering.

6. Heard the learned Senior Counsel for the petitioner/accused and Special Public Prosecutor for CBI appearing for the respondent and perused the materials on record.

7. It is useful to refer to the decision rendered by this Court in *Easwaramurthy vs. N.Krishnaswamy* (cited supra). The relevant paragraphs are extracted hereunder:-

" 3. In respect of the above said contentions raised by the learned counsel for the petitioner, it is relevant to note the settled principles of law laid down by the Hon'ble Supreme



Court of India reported in Bihari Prasad Singh v. State of Bihar, (2000 SCC (Cri) 1380): (1999 AIR SCW 4926). In the abovesaid decision, Their Lordships have held as follows (paras 2 and 3):

"The only question that requires consideration in the present case is whether the High Court while exercising its revisional jurisdiction can refuse to hear or entertain the matter on the ground that the accused has not surrendered. Under the provisions of the Criminal Procedure there is no such requirement though many High Courts in this country have made such provision in the respective rules of the High Courts. But it is stated to us that there is no such rule in the Patna High Rules. In that view of the matter, the High Court was not Justified in rejecting the application for revision solely on the ground that the accused has not surrendered."

4. In respect of the same question of law viz., whether the accused concerned in the revision against conviction, has to surrender and thereafter only seek the relief of suspension of sentence, the Hon'ble Mr. Justice Khalid (as he then was) has held in the decision reported in Ibrahim v. State of Kerala (1979 KLT 857) as follows:

2. Sections 397, 399 and 401 of the Code deal with the powers of revision. Under Section 397, revisions can be filed both before the High Court and the Sessions Judge. The jurisdiction of the revisional Court to pass interim orders under Section 397(1) is as follows:

"(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the



purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record"

5. The words "direct that the execution of any sentence or order be suspended" have to be read disjunctively from the words and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Suspension of the execution of any sentence or order postulates that the petitioner is not in confinement. This Section gives jurisdiction to the revisional Court to suspend sentence even though the petitioner is not in confinement. The question of releasing him on bail arises only when he is in confinement. Therefore, when the accused in confinement makes an application for suspension of sentence on order, the Court should not only order suspension of the sentence or order but order his release on bail also. Not so, when he is not in confinement. This section clearly recognises the difference between a case where an accused is in confinement and when not in confinement. Thus, it will not be proper for the revisional Court to insist upon an accused to be remanded to confinement before his sentence can be suspended, for, that will be acting against the clear and express provisions contained in Section 397 (1) of the Code, quoted above, enabling the revisional Court to exercise the twin jurisdiction



vested. In it in cases where the accused is in confinement and not in confinement. The matter becomes clear when the other sections of the Code are also considered.....

8.....the revisional Court need not insist upon the confinement of the accused before ordering suspension of sentence of order passed against him. If the accused is in confinement, the revisional Court will have to direct his release on bail; if he is not in confinement, the revisional Court need only suspend the execution of the sentence or order, either on the bond already executed or as directed by the revisional Court. Since the relevant provisions of the Code have clearly delineated the situation where the accused's presence is necessary, and since Section 397 is silent about the custody or confinement of the accused, the revisional Court need not insist upon bringing the accused to confinement before exercising the powers under Section 397(1) of the Code."

6. In view of the abovesaid decision of the Hon'ble Supreme Court as well as the decision rendered by his Lordship Justice Khalid (as he then was), it is well settled that in respect of the revision against conviction and sentence, for granting the relief of suspension of sentence, the accused need not surrender and undergo confinement. and filing revision without surrendering and confinement is well within the power contemplated under Section 397(1) of Cr. P.C. as Section 397(1) Cr. P.C. itself is very clear that there is absolutely no ambiguity as the reading of the words "direct that execution of any sentence or order be suspended."



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8. This Court would not normally grant exemption from surrendering, however taking into consideration the submissions made by the learned counsel for the petitioner/accused that the petitioner had voluntarily offered to deposit Rs.50 lakhs before the trial Court and he is also ready to deposit the original title deed of the immovable property worth about Rs.1.5 Crores to the credit of C.C.No.5195 of 2011, this Court is inclined to grant exemption from surrendering and suspend the sentence of imprisonment. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of suspension of sentence, exemption from surrendering and bail are granted on the following conditions :-

(a) The petitioner/accused, within a period of fifteen days from the date of receipt of a copy of this order, shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only), with two sureties, each for a like sum to the satisfaction of the learned Additional Chief Metropolitan Magistrate, Egmore, Allikulam, Chennai;

(b) The petitioner/accused, as per the undertaking, shall deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the credit of C.C.No.5195 of 2011 before the trial Court at the time of furnishing



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sureties and on such deposit being made, the trial Court shall redeposit the said amount in Indian Overseas Bank, Sowcarpet Branch, Chennai in any of the interest bearing deposit scheme;

(c) The petitioner/accused shall also deposit the original title deeds of immovable property worth about Rs.1.50 Crores (Rupees One Crore and Fifty Lakhs) either belonging to himself or his relatives or friends, to the credit of C.C.No.5195 of 2011 before the trial Court at the time of furnishing sureties. The original title deed shall be accompanied with the Valuation Certificate issued by the Approved Valuer of Indian Overseas Bank, Sowcarpet Branch, Chennai;

(d) The petitioner/accused shall appear before the trial Court on every Monday at 10.30 a.m., until further orders. In the event of Monday being holiday, the petitioner shall appear on the next working day at 10.30a.m.

9. In the event of the petitioner not surrendering and executing the bond and complying with the undertaking and conditions within the time stipulated above, the suspension of sentence granted shall automatically get cancelled and the respondent shall take steps to secure him to undergo the period of sentence.



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10. Accordingly, these Criminal Miscellaneous Petitions stand ordered.

14.03.2024

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To

1. The Additional Chief Metropolitan Magistrate,
Egmore, Allikulam, Chennai .
2. The XX Additional Sessions, City Civil Court, Chennai
3. The Inspector of Police,
SPE : CBI : EOW : Chennai.
4. The Public Prosecutor for CBI,
High Court of Madras.

A.D.JAGADISH CHANDIRA, J.

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