IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2025

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THE HONOURABLE MR.JUSTICE SHAMIM AHMED

Crl.M.P.No.209 of 2025
in
Crl.A.No.38 of 2025

CH.V.K.S.Kumar @ Saikumar
S/o.Late Krishna Murthy ... Petitioner

/vs/

The State, represented by
The Deputy Superintendent of Police,
CBI/EOW/Chennai ... Respondent

Prayer : Criminal Miscellaneous Petition filed under section 430 of B.N.S.S, 2023 praying to suspend the sentence of imprisonment passed in C.C.No.30 of 2010 dated 27.12.2024 by the Court of XI Additional & Special Judge for CBI Cases relating to Banks and Financial Institutions at Chennai and enlarge the petitioner/appellant on bail till the disposal of the Criminal Appeal.

For Petitioner ... Mr. T. Sivananthan

For Respondent .... Mr. B. Mohan,
Govt. Advocate (crl.side)

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed upon the petitioner, by judgment and order dated 27.12.2024 passed in C.C.No.30 of 2010 by the learned XI Additional and Special Judge for CBI Cases relating to Banks and Financial Institutions at Chennai and to enlarge the petitioner on bail pending disposal of the criminal appeal.

2. The trial court, by its judgment dated 27.12.2024 made in C.C.No.30 of 2010, convicted and sentenced the petitioner/A10 as follows:

Petitioner's Rank	***Provision under which convicted***	***Sentence***
A-10	U/s.420 r/w. Section 34 of IPC	To undergo 4 years RI and to pay a fine of Rs.20,000/-, in default in payment of fine, to undergo Simple Imprisonment for one year

It also acquitted the petitioner/A10 from the charges framed against him u/s.120-B r/w.409, 419, 467, 468, 471, 472, 474, 201, 114 IPC & 13(2) r/w.13(1)(c) & (d) of Prevention of Corruption Act, 1988

3. 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.

4. The case of the prosecution is that a complaint was lodged by the then General Manager, Central Bank of India, Zonal Office, Chennai alleging that A1-Proprietor of M/s.Krishna Builders along with A2-the then Branch Manager of Central Bank of India, Mugappair Branch, Chennai and unknown private persons and officials of the Northern Coalfield Ltd (in short 'NCL') have entered into a criminal conspiracy during July 2009 to siphon the Fixed Deposit amount of Rs.25 crores deposited by the NCL in Central Bank of India at Mugappair Branch on 23.07.2009 and in pursuance of which, A1 -Proprietor of M/s.Krishna Builders submitted a forged Fax Message dated 23.07.2009 as if NCL had requested A2-Branch Manager of the Bank to transfer the said Fixed Deposit amount in the name of A1's Proprietory concern M/s.Krishna Builders towards 'their construction agreement due'. Based on such forged Fax Message, A2-Branch Manager of the Bank transferred the said amount in the current account of M/s.Krishna Builders (A/c.No.3014563150) on 24.07.2009 without verifying the genuineness of the fax message. On such transfer, A1 swindled the said amount by

transferring the same to various accounts maintained by A3 to A13 from various places, due to which, the complainant Bank sustained loss of 25 crores by paying the same to NLC. A-10 is one of such persons who received the swindled amount from A1.

5. Though charges were framed against A10 under sections 120-B r/w.409, 419, 467, 468, 471, 472, 474, 201, 114 IPC & 13(2) r/w.13(1)(c) & (d) of Prevention of Corruption Act, 1988, after trial, the trial court, convicted him only under section 420 r/w. section 34 of IPC and sentenced him as stated above.

6. The learned counsel for the petitioner submitted that the charge is for the offence of cheating and the prosecution is not able to adduce any evidence either oral or documentary to prove the petitioner/A10 has played any role in the alleged transaction said to be made with Central Bank of India, Mogappair Branch, thus the prosecution has failed to adduce any evidence in that regard, though they have examined PW1 to PW32 and marked number of exhibits. There is no evidence either oral or documentary to prove that petitioner/A10 involved in any of the banking transactions with Central Bank of India, Mogappair Branch or he deceived anybody by

making misrepresentations which attract the ingredients of the offence of cheating. Therefore, the prosecution has not substantiated the charges levelled against him through cogent evidence. He further submitted that the funds which were transferred from the account of A1 company maintained with Central Bank of India, Mogappair Branch to the companies operated by the petitioner/A10 is purely business related transactions which were legally made through proper banking channel and there is no evidence or any mitigating circumstances available in this case to substantiate that he had participated in any illegal activities in order to attract the ingredients of the offence u/s.420 IPC. It is his further submission that the petitioner/A10 has never been identified by any witness or any material circumstance is available from the side of the prosecution to show that he had participated in the crime.

7. It was further argued that due to pendency of the criminal case before this High Court, there is a blinking chance that in the near future, this appeal will be finally heard and decided. He further submits that there are arguable points in this appeal and the petitioner has fair chance of success in this Criminal Appeal. Thus, he prayed for grant of suspension of sentence and bail to the petitioner till the disposal of this Criminal Appeal.

8. Learned Govt. Advocate (crl.side) appearing for the respondent, has opposed the argument advanced by the learned counsel for the petitioner 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 petitioner at this stage be refused by this Court.

9. Heard Mr.T.Sivananthan, learned counsel appearing for the petitioner and Mr.B.Mohan, learned Govt. Advocate (crl.side) for the State and perused the impugned order and other materials available on record.

10. Several other submissions in order to demonstrate the falsity of the allegations made against the petitioner/appellant 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.

11.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.

12. 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.

13. 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 and the appellant is now under incarceration in Central Prison, Puzhal from 27.12.2024 and the fine amount of Rs.20,000/- has been

paid before the trial court. 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 -CH.V.K.S.Kumar @ Saikumar, Son of Late Krishna Murthy 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 XI Additional and Special Judge for CBI Cases relating to Banks and Financial Institutions at 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 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.

10.01.2025

msr

Note: Issue copy on 10.01.2025

To

1. The XI Additional and Special Judge
for CBI Cases relating to Banks
and Financial Institutions,
Chennai.

2. The Deputy Superintendent of Police,
CBI/EOW/Chennai.

3. The Superintendent,
Central Prison-1, Puzhal,
Chennai.

SHAMIM AHMED, J.

msr

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