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*Crl.M.P.No.2042 of 2025
in Crl.A.No.167 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM

THE HONOURABLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.No.2042 of 2025

in

Crl.A.No.167 of 2025

S. Ganesan

S/o.Mr.Subramani,

Conservancy Inspector, 28th Division,

Chennai Corporation,

Chennai.

... Petitioner /Accused

Vs.

State by

Inspector of Police,

City-II Detachment,

Vigilance and Anti-Corruption,

Chennai - 600 035.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430 of BNSS praying to suspend the sentence imposed on the petitioner/appellant/accused by the Hon'ble Special Court for the cases under Prevention of Corruption Act at Chennai vide judgment in C.C.No.137 of 2011 dated 20.01.2025, pending disposal of the main appeal.

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the judgment dated 20.01.2025 passed in C.C.No.137 of 2011 by the learned Sessions Judge, Special Court for the cases under Prevention of Corruption Act at Chennai, pending disposal of the above criminal appeal.

2. The petitioner/Accused in C.C.No.137 of 2011 was convicted by the Trial Court by the judgment dated 20.01.2025 for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo 4 years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo simple imprisonment for three months for the offence under Section 7 of Prevention of Corruption Act and for the offence under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo simple imprisonment for six months. The sentences are directed to run concurrently. Aggrieved by the said conviction, the petitioner filed Crl.A.No.167 of 2025 before this Court along with the instant



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miscellaneous petition seeking suspension of sentence and bail.

3. During trial, on the side of the prosecution, PW1 to PW10 examined and Exs.1 to 16 marked. On the side of the defence, DW1 to DW4 examined and Exs.D1 to D4 marked and material objects M.O.1 to M.O.4 marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

4. The primary ground raised by the petitioner is that the trial Court failed to consider that in this case, the Trap Laying Officer is in the rank of Deputy Superintendent of Police and the Investigating Officer is in the rank of Inspector of Police, which is in direct contravention of Rule 53(iii) of the Vigilance Manual. The Hon'ble High Court of Allahabad in **Suresh Chandra Gupta vs. State of Uttar Pradesh** reported in **MANU/UP/1589/1993** had held that the Superintendent of Police must give an authorisation and grant permission for the Inspector of Police to investigate the case, which is found not obtained in this case. Further in this case, PW3, the accompanying witness not obtained any permission from his superior about his association with the trap laying procedure against the petitioner. In support of his contention, the petitioner relied upon the judgment of this Court in **State vs. Mahalingam**



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reported in **2009 (3) MWN (Cri) 356**.

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4.1.The learned counsel for petitioner submitted that the case of the petitioner is that the petitioner is only sharing a hall in the office, which has free access and the petitioner has no exclusive room. In such circumstances, the petitioner's defence is that the trap amount has been placed in the drawer without petitioner's knowledge and the petitioner was forced to handle the same, which fact has not been considered by the trial Court. Once such defence taken, the statutory presumption under Section 20 of the Prevention of Corruption Act is rebutted and thereafter it is for the prosecution to prove that the petitioner accepted the bribe money. In this background, decoy a motivated person and the accompanying witness being an obliging witness, the trap cannot be said to be proper. These facts have not been considered by the trial Court.

4.2.Further, the petitioner also examined the defence witnesses to prove the fact that the decoy witness in this case was violating the Rules and he was collecting money for the maintenance of free public toilet, for which, the petitioner had lodged a complaint and the police also taken action. With this



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motive, the present trap has been laid. These facts have not been considered by the trial Court. The trial Court completely glossed over the evidence of the defence witnesses. The petitioner also filed a petition under Section 311 of Cr.P.C. to recall and examine certain witnesses. The trial Court dismissed the same and without giving sufficient time for the issue to be decided by the Appellate Court, Trial Court passed the judgment. The petitioner not given proper opportunity and the trial Court with the pre-conceived notion rendered the judgment of conviction. Hence, prayed for granting suspension of sentence.

5.The learned Government Advocate (Crl. Side) on the other hand strongly opposed the contention of the petitioner and submitted that in this case totally 10 witnesses examined on the side of the prosecution. PW1 is the sanctioning authority. In his sanction order/Ex.P1, he had clearly narrated the case of the prosecution, considered the case independently and thereafter granted sanction. PW2 is the decoy witness, PW3 is the accompanying witness. PW2 had clearly stated about the demand of money by the petitioner and handing over the money, which has been confirmed and corroborated by PW3. The demand in this case was initially made on 13.01.2020, thereafter,



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followed on 20.01.2010 and the third demand was on 21.01.2010. In this case, on the complaint of PW2, the Trap Laying Officer had conducted the pre-trap proceedings explaining the details to the accompanying witness/PW3 and the other official witnesses and thereafter the trap team has proceeded on the demand and on the acceptance of the trap amount from the decoy witness, the petitioner was caught red-handed. Phenolphthalein test confirms the same. The entire procedure has been clearly recorded in the Entrustment Mahazar and Recovery Mahazar. The petitioner at the time of trap or during the remand not made any objection with regard to the defence taken now. Only after legal advice, such defence belatedly taken. The trial Court considered all these aspects. Further, DW1 to DW4 examined and Exs.D1 to D4 marked. The trial Court considered the evidence of the defence witnesses and finding that other conservatory workers, who are working under the petitioner to oblige him had given evidence, which is contra to the materials available. Hence the trial Court had rightly convicted the petitioner.

6.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner has made an arguable case and the petitioner's legal contention that Trap Laying Officer is the Deputy



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Superintendent of Police and Inspector of Police is the investigating officer has not been denied. Further in this case, PW3/the accompanying witness admits that there is no prior permission from his superior and there is no material to show that he was summoned for the trap. The defence witnesses and evidence not properly considered. Hence, this Court finds that the conviction of the petitioner needs reconsideration. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

7. Accordingly, the substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8. 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 appeal and if he is not able to appear before the Trial Court on



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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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

**06.02.2025
(2/2)**

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Note: Issue today (on 06.02.2025)

To

1. The Special Judge,
Special Court for the cases under Prevention of Corruption Act,
Chennai.
2. The Inspector of Police,
City-II Detachment,
Vigilance and Anti-Corruption,
Chennai - 600 035.
3. The Superintendent,
Central Prison, Puzhal-I,
Chennai.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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