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Crl.M.P.No.5199 of 2025 in Crl.A.No.286 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5199 of 2025
in Crl.A.No.286 of 2025

1.B.Illango
2.Revathi

... Petitioners

Vs.

The State Reptd. by its,
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Krishnagiri District.
V & AC Cr.No.6/AC/2012.

... Respondent

PRAYER: Criminal Miscellaneous Petition is filed under Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence and confiscation proceedings passed in Special Calender Case No.1/2024 on the file of the learned Special Judge-cum-Chief Judicial Magistrate, Krishnagiri, dated 27.02.2025 and enlarge the petitioners on bail pending disposal of criminal appeal.

For Petitioner : Mr.S.Saravana Kumar



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For Respondent : Mr.S.Udayakumar,
Government Advocate (Crl. Side)

ORDER

This criminal miscellaneous petition has been filed to suspend the sentence of imprisonment imposed by the learned Special Judge-cum-Chief Judicial Magistrate, Krishnagiri in Special C.C.No.1 of 2014, dated 27.02.2025.

2.The conviction and sentence imposed on the petitioner in Special C.C.No.1 of 2014 are as follows:

- For offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, the 1st petitioner is sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for two months.
- For offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988, the 2nd petitioner is sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for two months.

3.The case against the petitioners is that the 1st petitioner was formerly working as Cooperative Sub Register/Field Officer, Kaveripattinam,



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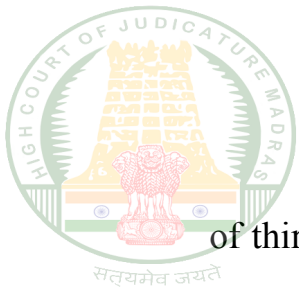
Krishnagiri District and he is a public servant as defined under Section 2(c) of Prevention of Corruption Act, 1988. The 2nd petitioner is the wife of the 1st petitioner. During the check period, between 01.01.2007 and 28.02.2009, the petitioners acquired disproportionate assets to the tune of Rs.12,93,442/-. During trial, on the side of the prosecution, 27 witnesses examined as PW1 to PW27 and 44 documents marked as Exs.P1 to P44. On the side of the defence, 8 witnesses examined as DW1 to DW8 and 41 documents as Exs.D1 to D41. On conclusion of trial, the Trial Court convicted the petitioners as stated above.

4.The learned counsel for the petitioners submitted that though PW1 examined and through him the sanction for prosecution (Ex.P1) marked, he is not a competent person to accord sanction since he is not the appointing authority. The other ground is that the 1st petitioner's entire income has not taken into account and the Statement No.III reflects only lesser income. Likewise, the expenditure has been shown on higher side, thereby reduced the savings of the accused and boosted the disproportionate assets. Boosting of the disproportionate assets is primarily on the construction cost of the house. The valuation report for the construction of the house produced



through PW4, is on a higher side. PW22 is the father-in-law of the 1st petitioner through whom Exs.D1 to D4 marked and PW23 is the brother-in-law of the 1st petitioner through whom Exs.D5 & D6 marked. These documents would go to show that the construction materials including bricks, wooden logs and timbers were sourced from them and no expenditure incurred by the 1st petitioner which was not considered by the Trial Court. These two prosecution witnesses (PW22 & PW23) not declared as hostile. In view of the same, the evidence of these witnesses to be considered in total but the Trial Court failed to do so. Likewise, the agriculture income earned during the check period not considered by the Trial Court when the admitted position of the prosecution that the petitioners owned agriculture land even prior to the check period, and the expenditure is shown on a higher side. Despite the 1st petitioner was able to properly account for the assets, which he was holding, by giving a detailed statements with corresponding evidence both oral and documentary but the Trial Court failed to consider the same and convicted the petitioners.

5.The learned counsel further submitted that the petitioners were granted suspension of sentence by the Trial Court on 27.02.2025 for a period



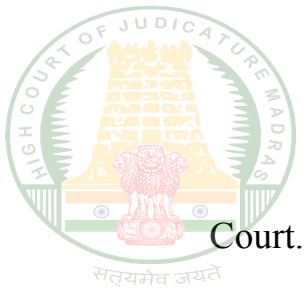
of thirty days, hence prays for suspension of sentence till the disposal of the appeal.

6.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the 1st petitioner is a Public Servant employed as Cooperative Sub Registrar/Field Officer, Kaveripattinam, Krishnagiri District and wife/2nd petitioner is a house wife. They have two sons, first son studying MBBS and his second son is school. At the beginning of the check period from 01.01.2007 to 28.02.2009, the petitioners were having assets to the tune of Rs.4,22,952/- and during the check period accumulated assets to the tune of Rs.19,89,077/-. The income during the check period is to the tune of Rs.5,64,255/- and the expenditure incurred is Rs.2,91,572/-. The assets acquired by the petitioner during the check period is Rs.12,93,442/- which is 229% more and above the income of the petitioner. To prove the case, the prosecution examined 27 witnesses and marked 44 documents. Though the petitioner attempted to give explanation by way of cross examination and through defence witnesses and documents, the same were not acceptable. Since the prosecution proved the case beyond all reasonable doubt, the Trial Court rightly convicted the petitioners. He fairly submitted



that the Trial Court suspended the sentence of the petitioners on 27.02.2025 for thirty days.

7.Considering the rival submissions and on perusal of the materials, it is seen that in this case, at the beginning of the check period, the petitioners were holding some agriculture land and two houses. The 2nd petitioner was having some agriculture income. The raise in disproportionate assets is primarily on the house valuation. PW22 and PW23, father-in-law and brother-in-law of the 1st petitioner in their evidence state that the bricks were supplied to the petitioners at free of cost since they are brick manufacturers. Likewise, the timbers were sourced from their field and supplied to the petitioners at free of cost, hence the property valuation on these materials ought to have been deducted, but the same not done. Likewise, the evidence of the defence witnesses is to show that the petitioners were having income from other sources and the expenditure calculated is on a higher side. The Trial Court not adverted about the defence witnesses and defence exhibits. In a disproportionate assets case, the public servant and his family members to give their explanation by way of cross examination and by producing defence witnesses and exhibits which were not considered by the Trial



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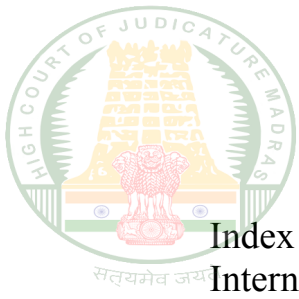
8.Finding that there are arguable points in the appeal and the appeal is a statutory one and it will take some time for the appeal to be taken up for final hearing, this Court is inclined to grant suspension of sentence till the disposal of the present criminal appeal.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners is suspended till the disposal of the appeal and they are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like sum to the satisfaction of the Trial Court.

10.Further, the petitioners shall appear before the Trial Court at 10.30 a.m., once in three months commencing from the month of April, 2025 till the disposal of the criminal appeal. Accordingly, this Miscellaneous Petition is ordered.

18.03.2025

Speaking Order/Non Speaking Order



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Index : Yes/No

Internet : Yes/No

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To

- 1.The Special Judge-cum-Chief Judicial Magistrate,
Krishnagiri.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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