

Crl.M.P.No.12057 of 2016
in Crl.A.No.765 of 2016

S.BASKARAN, J.

The petitioner, who is the accused in C.C.No.20 of 2012 dated 30.09.2016 on the file of the learned XI Additional Sessions and Special Court for CBI Cases, Chennai, seeks suspension of sentence passed against him and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. After trial, petitioner was convicted and sentenced as under:-

(i) Under Section 409, 420, 467, 468 r/w.471 of IPC and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, sentenced to undergo 5 years rigorous imprisonment for each offence and also to pay a fine of Rs.1,00,000/- for each offence (in total Rs.5,00,000/-) and in default to undergo 6 months rigorous imprisonment.

(iii) All the sentences are ordered to be undergone by the accused concurrently.

3. The learned counsel for the petitioner submitted that the petitioner/appellant has a fair chance of success in the appeal and

there are triable issues in the main criminal appeal. He also submitted that the trial court has failed to appreciate the defence made out by the appellant/petitioner. It is pointed out by the learned counsel for the petitioner that the amount as allegedly misappropriated by the accused has already been paid back to the concerned Bank and further the trial court has held that no material is placed to prove that the Bank suffered interest loss of Rs.2,70,42,119/-. It is also stated by the petitioner counsel that a sum of Rs.50 lakhs which was in the accounts of the appellant/accused and his other family members has been now in the Parking Account of the Bank concerned; as such, no financial loss has occurred to the Bank. It is also pointed out by the learned counsel for the petitioner that the petitioner is out of job at present and having no source of income and as the only bread winner of the family, he has no means to pay the fine amount of Rs.5,00,000/-, which was imposed by the trial court.

4. On the other hand, the learned Special Public Prosecutor appearing for the respondent/State contended that the accused has not paid the fine amount of Rs.5,00,000/- imposed by the trial court and the appellant who was working as Branch Manager of the Indian Bank, Harbor Branch, had misused his official position and caused

wrongful loss to the Bank and the same has been proved by the prosecution. The learned Special Public Prosecutor further pointed out that the averments raised in the counter filed by them has to be taken into consideration. However, the learned Special Public Prosecutor conceded that a sum of Rs.50 lakhs belonging to the accused and his family members are now in the Parking Account of the Bank concerned. It is also conceded by the learned Special Public Prosecutor that the trial court has held that the interest loss of Rs.2,70,42,119/- as alleged in the final report has not been established with material evidence.

5. In the facts and circumstances of the case and on the admitted fact that a sum of Rs.50 lakhs being available in the Parking Account of the Bank and also taking into account the submission put forth on the side of the appellant/petitioner that no interest loss was accrued to the Bank and the present status of the accused, it will be just and appropriate to direct the petitioner as follows:-

(a) Appeal bail is granted to the petitioner/A-4/appellant.

(b) Instead of the total fine amount of Rs.5,00,000/-, the

petitioner is directed to deposit Rs.2,00,000/- (Rupees two lakhs), which shall be deposited in the trial court at the time of executing the bail bond.

(c) In default of depositing the the aforesaid fine amount, CBI or the complainant can move this court for cancellation of the petitioner's appeal bail.

(d) Petitioner's/A-1, sentence of imprisonment alone is suspended on condition that he executes 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 XI Additional Sessions and Special Court for CBI Cases, Chennai;

(e) Petitioner/A-1 shall report before the said court on the first working day of every month at 10.30 am., until further orders.

23.12.2016

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S.BASKARAN,J.

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