BAIL SLIP

The Accused namely Viz., B.Gurunathan, S/o.Late S.Bakthavachalam (Accused in Crl.A.No.708 & 709 of 2009) and Crl.A.No.710 of 2009 and R.R.Sridharan, S/o.Late. R.N.Ramalingam) were directed to released on bail made in M.P.No.7 of 2009 (3 MPs) in Crl.A.Nos.708 to 710 of 2009, dated 19.11.2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 02.09.2016)

DATED : 16.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.A.Nos.709 & 710 of 2009

1.B.Gurunathan ... Appellant in Crl.A.709 of 2009

2.R.R.Sridharan ... Appellant in Crl.A.710 of 2009

Vs.

State by
Inspector of Police,
SPE : CBI : ACB,
Chennai,
(Crime No.RC MAI 2002 A 0005) ... Respondent in both appeals

Prayer: Criminal Appeals have been filed under Section 374 (2) of the Criminal Procedure Code, against the judgment dated 27.10.2009 in C.C.No.49/2003 passed by the learned XI Additional Judge for CBI Cases, Chennai-1.

For Appellants : Mr.S.Ashok Kumar, Senior Counsel,
for M/s.G.Ravikumar

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

ORDER

These appeals have been filed by the appellants, who are A1 & A3 respectively, against the judgement dated 27.10.2009 in C.C.No.49/2003 passed by the learned XI Additional Judge for CBI Cases, Chennai-1, in and by which the appellants herein/accused were convicted and sentenced as follows_

	Conviction	Sentence
A1 & A3	Section 120-B r/w 420 IPC and 13(2) r/w 13(1)(d) of PC Act and Section 420 IPC	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months, for each offence
A1	13(2) r/w 13(1)(d) of PC Act and Section 420 IPC	RI for one year and to pay a fine of Rs.2,000/-, in default to undergo RI for three months
		Sentences imposed the appellants/accused were directed to run concurrently.

2.For the sake of convenience, the appellants herein are referred to as per their ranking before the Trial Court viz., A1 & A3 respectively.

3.The gist of the prosecution case leading to the conviction of the appellants is as follows_

3-1.During the period from December-2000 to December-2001 at Chennai, the accused 1 to 3 conspired to do and cause illegal acts namely to cheat Indian Overseas Bank, Tower Branch, Anna Nagar and to commit criminal misconduct and in pursuance of the conspiracy, the 2nd accused Harinathan fraudulently and dishonestly knowing fully well that he has no sufficient funds in their account issued four numbers of cheques of Karuru Vysya Bank, T.Nagar Branch, totalling worth about Rs.13 lakhs and in pursuance of the conspiracy, the 3rd accused R.Sridharan fraudulently and dishonestly knowing fully well that he has no sufficient funds in his bank account issued eight numbers of cheques of Vijaya Bank, Madurai Branch cheques worth about Rs.34,90,000/- and the 1st accused B.Gurunathan in pursuance of the conspiracy by misusing/abusing his official opinion, by illegal means, got the above said cheques given by them purchased by the Branch Manager of Indian Overseas Bank, Tower Branch, Chennai by making false representation and thereby, A1 to A3 committed the offence punishable under Section 12-B r/w 420 IPC and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

3-2. During the said period, the accused 1 to 3, cheated the Indian Overseas Bank, Tower Branch, Chennai by dishonestly inducing the bank to deliver a total sum of Rs.47.90 lakhs, by way of cheques to the third parties and the actual beneficiary is A1 and A1 to A3 thereby committed the offence punishable under Section 420 IPC.

3-3.The 1st accused, being a public servant employed as Clerk-cum-Shroff of Indian Overseas Bank, Tower Branch, Anna Nagar, during the said period, by corrupt or illegal means or by otherwise abusing his official position obtained for himself and others pecuniary advantage to the extent of

Rs.47.90 lakhs from Indian Overseas Bank, Tower Branch, Anna Nagar and thereby, A1 committed an offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

4.In order to prove the guilt of the accused, the Prosecution has examined 27 witnesses and marked 113 documents as Ex.P.1 to Ex.P.113. On the side of the accused, no witness was examined; however, nine documents were marked as Ex.D.1 to Ex.D.9. When the accused were examined under Section 313(1)(b) of Cr.P.C., regarding the incriminating materials and facts which appeared against them, they denied the allegations.

5.The Trail Court, after considering both oral and documentary evidence, has convicted and sentenced the appellants/A1 & A3 as stated supra and acquitted the 2nd accused from the case. Aggrieved over the conviction and sentence imposed on the appellants herein/A1 & A3, they have filed the present appeals before this Court.

6.The learned senior counsel for the appellants/A1 & A3 would contend that he is not going to touch upon the merits of the case, but only on the sentence. The learned senior counsel for the appellants submitted that A1 is only a last grade servant and he was working as Clerk-cum- Shroff, in Indian Overseas Bank, Tower Branch, Anna Nagar and he never worked in the cheque purchasing section of the said Brnach and only the Chief Manager is the ultimate authority for purchasing all the cheques. The case was registered on 21.02.2002. Even as per the case of the prosecution, there was no wrongful loss to the Bank and even before registering the FIR, the entire amount was repaid to the bank between 3.00 pm to 3.30 on 23.12.2001, which was on Sunday, which would be evident from Ex.P.18, and the normal working and cash transactions have to be completed before 12.30 pm on every Sunday; therefore, it could be presumed that the officials of the bank only made the payment by way of cash. But, these aspects were not properly considered by the Trial Court. However, as stated above, the learned senior counsel for the appellants submitted that he is not arguing on the merits and demerits of the case. Thus, the learned Senior Counsel for the appellants submitted that considering the fact that the entire amount has been repaid to the Bank, before the registration of the case/FIR as well as taking note of the facts that the appellants are suffering from various ailments and that the Bank has not lodged any complaint and only on source information, the respondent-CBI has registered the FIR and prosecuted, which ended in conviction, the sentence could be modified by converting the rigorous imprisonment into that of the simple imprisonment and by fixing a fine amount, a recommendation could be made to the State Government to pass appropriate orders under Section 433 (d) of Cr.P.C. In support of his contention, the learned senior counsel for the appellants has also relied upon the decisions of this Court reported in CDJ 2007 MHC 2934 [M.V.Nathan Vs. State rep by the Special Police Establishment/Central Bureau of Investigation/Anti-Corruption Brnach, Chennai] and 2007-1 LW (Crl) 123 (S.P.Meiappan & another Vs. State, etc).

7.Heard the learned Special Public Prosecutor appearing for the CBI also, who has not raised any serious objection for the request made by the learned Senior counsel for the appellants on the ground that the appellants are suffering from various ailment.

8.Since the learned senior counsel for the appellants himself has stated that he is not touching upon the merits and demerits of the case and he is arguing only on the sentence, this Court is not dealing with the merits and demerits of the case.

9.Though the learned senior counsel appearing for the appellants made a request to convert the rigorous imprisonment into that of the simple imprisonment and to fix a fine amount and also to make a recommendation to the State Government under Section 433(d) of Cr.P.C. to convert the simple imprisonment into that of a fine, this Court is not inclined to fix any amount as fine and to recommend to the State Government under Section 433(d) of Cr.P.C. However, considering the fact that the entire amount has been repaid to the Bank, even before filing the case/FIR and also taking into account the fact that the appellants are suffering from various ailments, this Court is inclined to modify the sentence.

10.Accordingly, this Court, while confirming the conviction imposed on the appellants for the alleged offences, modifies the sentence of rigorous imprisonment into that of the simple imprisonment for the alleged offences. The sentence shall sun concurrently. The appellants are at liberty to move the appropriate Government for proper relief under Section 433(d) of Cr.P.C., by making a representation within a period of four weeks from the date of receipt of a copy of this judgment with regard to the commutation of the simple imprisonment to that of fine, as it is a matter between the accused and the Government in that regard. If such a representation is received from the appellant/accused, it is for the Government to pass appropriate orders under Section 433(d) of Cr.P.C. Hence, until the Government decides one way or the other on receipt of such representation, the appellant/accused need not surrender, as he is on bail pending this appeal.

With the above observations and modification in the sentence, the appeals are partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The XI Additional Judge for CBI Cases,
   Chennai-1.

2. The Special Public Prosecutor
   for CBI Cases,
   High Court, Madras.

3. The Inspector of Police,
   SP, CBI, ACB, Chennai 06.

+3cc's to Mr.G.Ravikumar, Advocate, S.R.No.52682

Crl.A.Nos.709 & 710 of 2009

RP(CO)
CA(03/10/2016)