



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Seventh day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL MP(MD) Nos.5889 & 4672 of 2017
IN
CRL A(MD) Nos.155 & 165 of 2017

N.S.GNANESWARAN

CONVICTED PRISONER(C.P.NO.9525) ...PETITIONER/APPELLANT/ACCUSED NO.2
IN CRL MP(MD) No.5889 of 2017

IN CRL A(MD) No.155 of 2017

S.SELVARAJ

... PETITIONER/APPELLANT/ACCUSED NO.1

IN CRL MP(MD) No.4672 of 2017

IN CRL A(MD) No.165 of 2017

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SPE.CBI.ACB, CHENNAI,
IN RC.NO.22(A)/2005.

... RESPONDENT/RESPONDENT/
DEFACTO COMPLAINANT
IN CRL MP(MD) No.5889 of 2017
IN CRL A(MD) No.155 of 2017

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SPE:CBI:ACB:CHENNAI,
RC 22(A)/05

... RESPONDENT/RESPONDENT/COMPLAINANT
IN CRL MP(MD) No.4672 of 2017
IN CRL A(MD) No.165 of 2017

PRAYER IN CRL MP(MD) No.5889 of 2017:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to enlarge the petitioner on bail by suspension of sentence imposed upon petitioners by Learned 2nd Additional District Court, For CBI Case in Madurai in C.C.No.8/2006 dated 19/05/2017.

PRAYER IN CRL MP(MD) No.4672 of 2017:

To pass an order to suspend the sentence imposed on the petitioner by the Honourable II Additional District Court for CBI Cases Madurai, Madurai District in C.C.No.8/2006 dated 19/05/2017 forthwith pending disposal of the above Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S. NIRANJAN S. KUMAR, Advocate for the petitioner IN CRL MP(MD) No.5889 of 2017 and M/S.S.PALANI VELAYUTHAM, Advocate for petitioner IN CRL MP(MD) No.4672 of 2017 and of MR.S.JAYAKUMAR, for Special



Public Prosecutor for CBI Cases on behalf of the Respondent in both petitions the court made the following order:-

These Petitions have been filed to suspend the sentence imposed on the Petitioners in C.C.No.8 of 2006, dated 19.5.2017, on the file of the II Additional District Court for CBI Cases, Madurai.

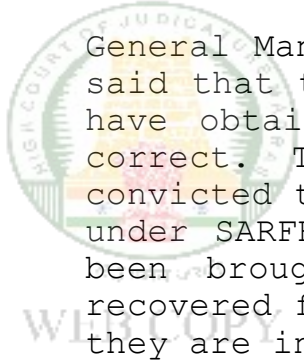
2. In Cr.M.P.No.5889 of 2017, the Petitioner has been arrayed as A2 and has been convicted under Section 120(b) r/w 420 IPC and Section 419 of IPC and sentenced to undergo rigorous imprisonment for seven years under Section 120(b) r/w Section 420 IPC and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for three months and under Section 419 IPC, the Petitioner is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.20,000/- in default to undergo simple imprisonment for three months.

3. In Crl.M.P.No.4672 of 2017, the Petitioner has been arrayed as A1 and has been convicted under Section 120(B) r/w 420 IPC and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for three months and under Section 120(B) r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for three months and for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for three months. (Total fine Rs.1 lakh)

4. Challenging the above said conviction and sentence the above Criminal Appeals have been filed. Pending the appeals, the Petitioners have sought for suspension of sentence and filed these applications.

5. I have heard Mr.Niranjan S.Kumar and Mr.S.Palani Velayutham, learned counsels for the Petitioners and Mr.S.Jayakumar, learned Special Public Prosecutor appearing for the CBI Cases and perused the records carefully.

6. The learned counsel appearing for the Petitioners would submit that the main allegation against the accused are that in the name of the fictitious company, A3 obtained a cash credit loan to the tune of Rs.17.34 lakhs. A1 being the Branch Manager of the Bank, without verifying the credential of Company has advanced the loan. A2 being an intermediary has also committed the offence. P.W.5, who is the Chief Manager of Punjab National Bank in his evidence has categorically stated that he has inspected the shops and found that adequate securities are not available to cover the loan availed and the collateral security is also over-valued. Likewise P.W.25, who is another Chief Manager of the Punjab National Bank inspected the above said company has deposed that the loan has been sanctioned based on the recommendation of the Loan Recommending Officer one Mr.Balakumar and the above-said bank official also inspected the company and recommended for loan, based on the same, loan has been sanctioned. Another witness P.W.26 is also a



General Manager of the said Bank, inspected the above shops and the said that the shop was functioning. Hence the very charge that they have obtained loan in the name of the fictitious company is not correct. The Court below without considering the same, have convicted the Petitioners. Apart from that subsequently proceedings under SARFEASI Act has been initiated by the Bank and property has been brought for auction and the entire loan amount has been recovered from them. They have been convicted by the trial Court and they are in judicial custody from 19.5.2017.

7.The learned Special Public Prosecutor for CBI Cases appearing for the respondent would submit that the prosecution has examined so many witnesses to establish that there is no company functioning in the above said address and it is a fictitious one. They obtained the loan by furnishing over-valued collateral security and cheated the bank. One of accused being the Branch Manager, without verifying the credentials of the accused, sanctioned loan and committed the offence. The trial Court considering the entire evidence rightly convicted the appellants.

8.I have considered the rival submissions of either side and perused the materials placed before this Court.

9.From the evidence available, it is seen that two companies were functioning, but the collateral security provided by them is inadequate, over-valued, thereby they cheated the Bank. Considering the facts and circumstances of the case and as some arguable points involved in the appeals and it will take reasonably long time to dispose the appeals, I am inclined to suspend the sentence of imprisonment alone imposed against the petitioners.

10.In fine, these Petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended and the petitioners shall be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) along with common sureties each for a like sum to the satisfaction of the II Additional District Court for CBI Cases, Madurai, Madurai District with a further condition that the petitioners shall report before the said Court on the first working day of every English Calendar month at 10.30 a.m., till the disposal of the appeal or until further orders.

sd/-

07/08/2017

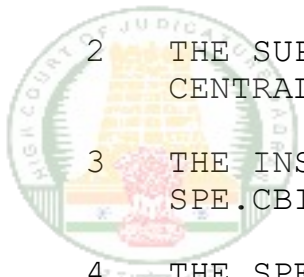
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

<https://hcservices.courts.gov.in/hcservices/>

THE II ADDITIONAL DISTRICT JUDGE FOR CBI CASES,
MADURAI.



2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
SPE.CBI/ACB : CHENNAI.

4 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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+1. C.C. to M/S. NIRANJAN S. KUMAR Advocate SR.No.28191
+1. C.C. to M/S. S.PALANI VELAYUTHAM Advocate SR.No.28193

ORDER IN
CRL MP(MD) Nos.5889 & 4672 of 2017 IN
CRL A(MD) Nos.155 & 165 of 2017
Date :07/08/2017

MKV-CM-MSA-SAR 4/8.8.2017/4P-7C