IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Tenth day of October Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.11995 and 11996 of 2018

IN CRL A.547/2018

B.JANAKIRAMAN [PETITIONER IN BOTH THE PETITIONS]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
CBI/SPE/ACB/CHENNAI. [RESPONDENT] IN BOTH THE PETITIONS]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.547/2018 on the file of the High Court, the High Court will be pleased to

[i]enlarge him on bail by suspending the sentence imposed on him by the Learned XI Additional Special Judge for CBI Cases (for Banking and Financial Institutions) by order dated 31.08.2018 in C.C.No.40/2010.[CRL.MP.NO.11995/2018]

[ii]suspend the fine amount of Rs.2olakhs imposed on him by the learned XI Additional Special Judge For CBI Cases/(For Banks And Financial Institutions)by order dated 31.08.2018 C.C.NO.40 OF 2010. [CRL.MP.NO.11996/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.547/2018 on the file of the High Court and upon hearing the arguments of M/S.J.C.DURAIRAJ Advocate for the petitioner[IN BOTH THE PETITIONS] and of MR.K.SRINIVASAN SPECIAL PUBLIC PROSECUTOR FOR CBI CASES on behalf of the Respondent, the court made the following order:-

The petitions have been filed by the petitioner/A2 to suspend the sentence and the fine amount of Rs.20 Lakhs imposed on him in the judgment dated 31.08.2018 made in C.C.No.40 of 2010 on the file of the learned XI-Additional Special Judge for CBI Cases (For Banking and Financial Institutions), pending disposal of the appeal.

2. The appellant is the second accused in C.C.No.40 of 2010 on the file of the XI-Additional Special Judge for CBI Cases (For Banking and Financial Institutions). He was found guilty of the offences u/s. 120(B) r/w Section 420 of IPC and Section 13(2) r/w 13 (1)(d) of Prevention of Corruption Act 1988 and he has been convicted and sentenced as under:

S. No.	Conviction	Sentence
1.	Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act 1988	5 years R.I and fine of Rs.10 Lakhs in default to undergo S.I for 1 year.
2.	Section 420 of IPC	5 years R.I and fine of Rs.10 Lakhs in default to undergo S.I for 1 year.

Aggrieved against the same, the petitioner has preferred this appeal.

3. Heard both sides.

4. The case of the prosecution is that the A1 was serving as Senior Manager at Canara Bank, Perungudi Branch during 2007-2008. The second accused/petitioner herein was the Managing partner of a firm called M/s. Hobby Screens in which the accused 3 to 5 are working partners. According to the prosecution, the Accused 2 to 5 have approached the Bank to advance loan to them. According to the prosecution, A-1 in collusion with A-2 to A-5, without proper approval and permission has granted granted temporary over draft to A-2 to A-5 in contravention of the banking rules. The accused A2 to A5, who had separate accounts in the said Canara Bank under the same branch, transferred the loan account to their individual account without any business transaction. After availing the loan amount, the accused 2 to 5, without repaying the loan amount, has defrauded the Bank thereby the Bank sustained loss and the accused made wrongful gain.

5. The learned counsel for the petitioner/A2 would submit that there are several infirmities and inconsistencies found in the prosecution case. He would submit that the case of non repayment of loan has been converted to a case of cheating. He would also submit that there are material contradiction particularly in the prosecution witnesses, with regard to charges laid against them. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court reported in ***(2009) 3 SCC 767 (Angana Vs. State of Rajasthan)***. Thus, the learned counsel for the petitioner sought for suspension of sentence, pending the appeal.

6. The learned counsel for the petitioner/A2 would further submit that the petitioner/A2 has been directed by the trial Court to pay a huge fine amount of Rs.20 lakhs. In this regard, the learned counsel for the petitioner submitted that the petitioner was unable to remit the fine amount on the date of judgment of the trial Court i.e., on 31.08.2018; as such, the petitioner is in prison for the past one month. Further, no valid reason has been assigned by the trial Court for arriving at the sum of Rs.20 lakhs to fix as fine amount. In this regard, the learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court reported in ***(2007) 6 SCC 528 [Dilip S .Dahanukar Vs. Kotak Mahindra Co. Ltd.,]*** and submitted that the amount of compensation sought to be imposed must be reasonable and not arbitrary and before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. Relying upon the said Judgment, the learned counsel for the petitioner would submit that though the prayer had been sought by the petitioner to suspend the payment of fine, the petitioner is undertakes to deposit 50% of the fine amount, without prejudice to his right, pending appeal.

7. The learned Additional Public Prosecutor appearing for the prosecution would mainly contend that the petitioner is the person who has actively participated in the affairs of the firm and defrauded the bank to the tune of Rs.2.11 Crore. He would submit that in respect of three other accused, the trial Court had imposed a fine of Rs.10 lakhs each and that they have paid the fine amount in full and thereby opposed the petition.

8. Having regard to the submissions made by the counsel for the petitioner/A2 and also in the light of the judgment of the Hon'ble Supreme Court reported in ***(2007) 6 SCC 528 [Dilip S . Dahanukar Vs. Kotak Mahindra Co. Ltd.,],*** this Court is of the opinion that instead of directing the petitioner to pay the entire amount, by directing the petitioner to deposit a reasonable amount, the sentence could be suspended, pending appeal.

9. Accordingly,

(i) the petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two sureties each for a like sum to the satisfaction of the learned XI-Additional Special Judge for CBI Cases (For Banking and Financial Institutions), Chennai.

(ii) As far as the fine amount is concerned, the petitioner shall deposit Rs.12.5 lakhs, before the trial Court at the time executing bond. It is made clear this concession is granted, pending disposal of the appeal.

(iii) The petitioner shall report before the trial Court at 10.30 am, once in a month, i.e., first working day of every month, starting from November, 2018.

-sd/-
10/10/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE XI ADDITIONAL SPECIAL JUDGE
FOR CBI CASES[FOR BANKING AND FINANCIAL INSTITUTIONS]
CHENNAI

2 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
HIGH COURT, MADRAS.

3 STATE REP BY
THE INSPECTOR OF POLICE,
CBI/SPE/ACB/CHENNAI.

[*]4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

[*][MEMO FILED BY THE PETITIONER, AS PER THE ORDER OF THIS COURT DATED 12/10/2018 MADE IN USR NO.51448/2018].

+1 C.C. to M/S.J.C.DURAIRAJ Advocate on payment of necessary charges SR.NO. 19081

Order

in
CRL MP.11995 AND 11996/2018

in
CRL A.547/2018

Date :10/10/2018

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RD 11/10/2018
RD 12/10/2018