IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Tenth day of September Two Thousand Eighteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.6968 of 2018

IN CRL A.293/2018

S.KARTHIKEYAN, [PETITIONER/APPELLANT]

Vs

THE STATE REP. BY [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
CBI/EOW, CHENNAI.
(CR.NO.RC.8/E/2008/CBI/EOW)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner/appellant herein in C.C. No.21 of 2014 by the learned XI Additional Sessions Judge (Special Judge for CBI cases relating to Banking and Financial Institutions) at Chennai and enlarge the petitioner on bail pending disposal of the above Crl.A.293/2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.J.RAMESH, Advocate for the petitioner and of MR.K.SRIVIVASAN, Spl. Public Prosecutor for CBI-cases, on behalf of the Respondents the court made the following order:-

The petition has been filed to suspend the sentence of imprisonment imposed on the petitioner/appellant in the judgment dated 25.04.2018 made in C.C.No.21 of 2014 on the file of the learned XI Additional Sessions Judge (Special Judge for CBI Cases relating to Banking and Financial Institution) at Chennai and enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner /appellant herein is the eighth accused in C.C.No.21 of 2014 on the file of the learned XI Additional Sessions Judge (Special Judge for CBI Cases relating to Banking and Financial Institutions) at Chennai. He was found guilty of the offences u/s.120-B r/w 409, 419, 420, 467, 468, 471 IPC and Section 13(2) r/w 13(1)(c)(d) of of Prevention of Corruption Act, Section 419 and Sections 420, 467, 468 and 471 of IPC and he has been convicted and sentenced as under:

S.No.	Conviction	Sentence
1.	Section 120-B r/w 409, 419, 420, 467, 468, 471 IPC and Section 13 (2) r/w 13(1)(c)(d) of P.C Act 1988.	4 years R.I and fine of Rs.4,00,000/- in default to undergo S.I for 6 months.
2.	Section 419 of IPC	3 years R.I and fine of Rs.4,00,000/- in default to undergo S.I for 6 months.
3.	Section 420, 467, 468 and 471	4 years and fine Rs.4,00,000 in default to undergo S.I for 6 months for each offence. Rs.4,00,000x 4= Rs.16,00,000/- (Total fine amount of Rs.24,00,000/-). Out of total fine amount of Rs.24,00,000/-, an amount of Rs.20,00,000/- shall be paid to the State Bank of Bikaner and Jaipur to compensate the loss u/s.357 of Cr.PC.

Aggrieved against the same, the petitioner has preferred this appeal and also filed the petition for suspension of sentence.

3. The case of the prosecution is that by entering into criminal conspiracy with the other accused, the petitioner/A8 along with other accused forged the documents and that by using the forged documents, the Accused 2 & 3 obtained loan from the State Bank of Bikaner and Jaipur and thus, they cheated the bank.

4. It is the main submission of the learned counsel appearing for the petitioner that the petitioner/A8 has been directed by the Trial Court to pay a huge fine amount of Rs.24,00,000/-. In this regard, the learned counsel for the petitioner submitted that the petitioner was arrested and remanded to judicial custody on 07.06.2017 and he is in custody for more than a year and three months and he has to take care of his aged mother who is staying alone in a rental house at Chennai and that she does not have any source of income and has been suffering to eke out her expenses. He would further submit that only if the sentence is suspended, the petitioner/A8 will be able to mobilize the fine amount levied by the trial Court. He would further submit that no valid reason has been assigned by the trial Court for imposing 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 the fine amount imposed on the petitioner may be waived.

5. Further, according to the learned counsel for the petitioner, there are several infirmities and inconsistencies found in the prosecution case. He would submit that there are contradictions in the material particulars between the evidence of the prosecution witnesses and that the petitioner has got a fair chance of succeeding in the appeal and would submit that there is no immediate possibility for the appeal to be taken up for final hearing. He would further submit that the sentence against the co-accused in this case against whom fine amounts have been imposed similar to that of the petitioner have been suspended and they are directed to be released on bail on them agreeing to pay 50% of the fine amounts in installments. Further, the learned counsel for the petitioner would submit that the petitioner/A8 has also filed an affidavit undertaking to deposit a sum of Rs.12 lakhs in three equal installments. Thus, the learned counsel for the petitioner sought for suspension of sentence, pending the appeal.

6. The learned Special Public Prosecutor appearing for the respondent vehemently opposed to grant the prayers sought for by the petitioner/A8, contending that the Trial Court has clearly observed that there was conspiracy between the petitioner/A8 and the other accused persons; that the accused persons caused huge loss of Rs.246.35 lakhs and its interest thereon to the Bank; that no valid ground has been made out by the petitioner to waive the fine amount. If the petitioner/A8 is released on bail, there is every likelihood that he may abscond himself from the clutches of law. Thus, the learned Special Public Prosecutor sought for dismissal of the petition.

7. Heard both sides and perused the materials available on record.

8. Considering the facts and circumstances of the case 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.,), I am of the opinion that instead of directing the petitioner to pay the entire fine amount, the sentence could be suspended by directing the petitioner to deposit a reasonable amount, pending appeal.

9. Accordingly, the substantive sentence of imprisonment alone is suspended, pending appeal, on the following conditions-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- [Rupees Twenty Five Thousand only] with two sureties each for a like sum to the satisfaction of the learned XI Additional Sessions Judge (Special Judge for CBI Cases relating to Banking and Financial Institutions), Chennai, within a period of 15 days from the date of receipt of a copy of this order.

(ii) The petitioner shall deposit the sum of Rs.12 lakhs in three installments. Out of the total sum of Rs.12 lakhs, the petitioner shall deposit a sum of Rs.4 lakhs at the time of executing the surety bond before the Trial Court. The second installment of Rs.4 lakhs shall be deposited by the petitioner, within a period of two months from the date of execution of surety bond. The third installment of Rs.4 lakhs shall be deposited by the petitioner within another period of two months from the date of payment of second installment. In case of failure on the part of the petitioner in depositing the fine amount as directed above, the trial Judge shall intimate the respondent about the non-compliance and the respondent can move this Court for cancellation of bail.

(iii) The petitioner shall report before the Trial Court at 10.30 a.m, once in a month i.e first working day of every month.

-sd/-
10/09/2018

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 SESSIONS JUDGE,
(SPECIAL JUDGE FOR CBI CASES RELATING TO BANKING AND FINANCIAL INSTITUTIONS) AT CHENNAI.

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

4 THE INSPECTOR OF POLICE,
CBI/EOW, CHENNAI.

5 THE SUPERINTENDENT
CENTRAL PRISON, PUZHAL

+1 C.C. to M/S.J.RAMESH Advocate on payment of necessary charges SR.NO. 17205

Order
in
CRL MP.6968/2018
in
CRL A.293/2018

Date :10/09/2018

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

TA-12/09/2018