IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Second day of March Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.2116 of 2019

IN CRL.A.NO.82 OF 2019

K.KOTHANDAN [PETITIONER]

Vs

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

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.82/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in C.C.No.30 of 2006 dated 28.12.2018 on the file of Learned XI Additional Special Sessions Judge for CBI Cases CBI CASES Relating to Banks and Financial Institutions Chennai and enlarge the petitioner on bail pending disposal of the above mentioned criminal Appeal 82 of 2019. [CRL.MP.NO.2116 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.82/2019 on the file of the High Court and upon hearing the arguments of M/S. BABU MUTHU MEERAN M. Advocate for the petitioner and of MR.K.SRINIVASAN SPECIAL PUBLIC PROSECUTOR FOR CBI CASES on behalf of the Respondent the court made the following order:-

This petition has been filed to suspend the sentence of imprisonment imposed in the judgment dated 28.12.2018 made in C.C.No.30 of 2006 on the file of the learned XI Additional Special Sessions Judge for CBI Cases Relating to Banks and Financial Institutions, Chennai pending disposal of the appeal.

2. The petitioner/A-3 herein is the 3rd accused in C.C. No.30 of 2006 on the file of the learned XI Additional Special Sessions Judge for CBI Cases Relating to Banks and Financial Institutions, Chennai. He was found guilty of the offences u/s.120-B, r/w 419, 420, 468, 471 and u/s 13(2) r/w 13(1) & (d) of Prevention of Corruption Act, 1988, 420, 468, 471 r/w 468 and he has been convicted and sentenced as under:

S.No.	Conviction	Sentence
1	u/s.120-B, r/w 419, 420, 468, 471 and u/s 13(2) r/w 13(1) & (d) P.C Act	4 years R.I and fine of Rs.2,00,000/- in default to undergo S.I for 1 year
2	Section 420 of IPC	4 years R.I and fine of Rs.2,00,000/- in default to undergo S.I for 1 year
3	Section 468 of IPC	4 years R.I and fine of Rs.2,00,000/- in default to undergo S.I for 1 year
4	Section 471 r/w 468 of IPC	4 years R.I and fine of Rs.2,00,000/- in default to undergo S.I for 1 year

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

3. The case of the prosecution is that during the year 1988-1989 T.M.Varadarajan/A-2 who is the Proprietor of M/s.V.V.R.Agro Oil Suppliers and Venkataramanan/A-1 Branch Manager of Central Bank of India, Mugappair Branch entered into a criminal conspiracy along with four other persons and submitted fabricated documents and obtained loan, thereby cheated the Bank to the tune of Rs.41,71,340/- and caused loss to the Bank. After completion of investigation, the trial was conducted and the petitioner/A-3 was convicted for the offences under Sections 120-B, r/w 419, 420, 468, 471 and u/s 13(2) r/w 13(1) & (d) of Prevention of Corruption Act, 1988, 420, 468, 471 r/w 468 and sentenced to undergo imprisonment and pay fine as stated above.

4. The learned counsel for the petitioner/A-3 would submit that the Trial Court convicted the petitioner/A-3 on wrong appreciation and assumption of facts and law. He would further submit that the charges against the petitioner/A-3 is that he produced fabricated documents whereas it is no so. He would also submit that similarly charged persons A-4 and A-5 were acquitted of all charges and since A-6 died, the charge against him got abated. He would also submit that only allegations against the petitioner/A-3 is that he created an equitable mortgage of the property, which had been already mortgaged for Rs.4 lakhs with the Park Town Benefit Fund and that excepting the encumbrance stated to have been created on the property, the property is a genuine security and the property is situated in prime location valuing more than Rs.50 lakhs and that he had not impersonated as anybody and that he has not attained any monetary gain in the transaction. He would further submit that the petitioner/A-3 had stood as a guarantor and given his property as collateral security since, A-2 is known to him. He would further submit that the petitioner/A-3 is senior citizen aged about 69 years and due to his financial position, he is unable to pay the fine amount and come out on bail and that he is languishing in jail from 28.12.2018. He would rely on the judgment of this Court reported in ***2016-1 L.W (Crl.) 640*** and would pray that the petitioner/A-3 may be directed to pay a reasonable amount as fine pending disposal of the appeal.

5. The respondent is filed a counter wherein it had been held in paragraph 3 and 4 has hereunder:-

> "3. The substance of prosecution was that A-1 along with 5 other accused entered into a criminal conspiracy to cheat Central Bank of India on the basis of forged and fake documents. The petitioner is accused No.3. In pursuance of the conspiracy the petitioner dishonestly and fraudulently and with the intent to use it for cheating Central Bank of India forged a title deed dated 24.03.1991 similar to the original deed in his name in the property at No.1B, School Street, Jafferkhanpet, Chennai. He also fraudulently and dishonestly deposited the forged title deed dated 24.03.1991, forged certified copy of document dated 12.11.1997, forged encumbrance certificate dated 10.06.1997 and 17.11.1998 forged death certificate dated 12.04.1995, forged legal heir certificate dated 06.01.1993 forged extract from land registration dated 18.06.1992 as collateral security for the bank guarantee at Central Bank of India, Aminjikarai Branch and thereby used them as genuine, knowing them to be forged. He also signed the form of guarantee dated 22.11.1998 at Central Bank of India.
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> 4. The document offered as collateral security to the bank for bank guarantee for A-2 were invalid and forged documents the bank could not retrieve the amount due from VVR Agro Oil; Suppliers in which A-2 is one of the partner. The cumulative activities of accused and the petitioner resulted in a wrongful loss of Rs.41,71,340/- to the Central Bank of India."

6. The learned Special Public Prosecutor for CBI would oppose for grant of bail stating that the cumulative activities of the other accused and the petitioner resulted in wrongful loss to the tune of Rs.41,71,340/- to public sector undertaking and that taking into consideration the loss to the public exchequer, the Trial Court has directed the petitioner/A-3 to pay an amount of Rs.8,00,000/- towards fine and had directed that the amount may be paid to the Bank after the appeal period is over.

7. Placing reliance on the judgment of this Court reported in ***2016-1 L.W (Crl.) 640*** and taking into consideration the submissions made by the learned counsels and also considering that there are arguable points available in the appeal and it will take some considerable time for the appeal to be listed for final hearing, this Court is inclined to suspend the substantive sentence of imprisonment alone subject to the following conditions that:-

(i) the petitioner/A-3 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 Sessions Judge for CBI Cases Relating to Banks and Financial Institutions, Chennai.

(ii) Out of the total fine amount of Rs.8,00,000/- and the petitioner/A-3 is directed to deposit Rs.5,00,000/- in the Trial

Court to the credit of C.C.No.30 of 2006 in the following manner.

(a) Rs.2,0000/- (Rupees Two Lakhs only) at the time of furnishing the sureties and the balance amount of Rs.3,00,000/- (Rupees Three Lakhs only) shall be paid within a period of six weeks from the date of release of the petitioner/A-3 from the prison.

(iii) in the default of deposit the second installment within the due date, the respondent can move this Court for cancellation of the bail granted in view of the suspension of sentence.

(iv) the petitioner/A-3 shall appear before the above said Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

-sd/-
22/03/2019

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
SESSIONS JUDGE FOR CBI CASES RELATING TO
BANK AND FINANCIAL INSTITUTIONS,CHENNAI

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

3 THE SUPERINTENDENT,
CENTRAL PRISON,PUZHAL,CHENNAI

4 THE INSPECTOR OF POLICE
SPE CBI ACB, CHENNAI.

+1 C.C. to BABU MUTHU MEERAN M.M/S Advocate on payment of necessary charges SR.NO. 6023

Order
in
CRL MP.2116/2019
IN CRL.A.NO.82 OF 2019
Date :22/03/2019

From 7.2.2001 the Registry is issuing certified
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