IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fifteenth day of April Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.5261 of 2019

IN CRL A.216/2019

S.ARUNACHALAM [PETITIONER / APPELLANT]

Vs

STATE REP. BY [RESPONDENT]
THE ADDITIONAL SUPERINTENDENT OF POLICE,
SPE-CBI-ACB,
CHENNAI

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.216/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment passed against the petitioner by the Principal Special Judge for CBI Cases (VIII Additional City Civil Court) Chennai in the judgement dated 28.03.2019 in CC No.58 of 2003 and enlarge the petitioner on bail pending disposal of the above appeal.[CRL.MP.NO.5261/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.216/2019 on the file of the High Court and upon hearing the arguments of M/S.S.KALYANARAMAN 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:-

The petition has been filed to suspend the sentence of imprisonment imposed in the judgment, dated 28.03.2019, made in CC.No.58 of 2003, on the file of the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai, pending disposal of the appeal.

2. The petitioner herein is A9 in CC.No.58 of 2003 on the file of the learned Principal Special Judge for CBI Cases, Chennai. Though he was charged for the offences u/s.120b r/w 420 IPC and u/s.13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, he was found guilty only for the offence u/s. 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and he was not found guilty for the other offence and he has been convicted and sentenced as under:

S.No.	Conviction	Sentence
1.	Section 13(2) r/w 13 (1) (d) of P.C.Act, 1988	3 years R.I and fine of Rs.5,000/- in default to undergo S.I for 6 months.

Aggrieved against the same, the petitioner/A9 has preferred this appeal.

3. The case of the prosecution is that the complainant has filed a charge sheet in Crime No.RC MA1 1997 A 0034 dated 03.05.1997 against A1 to A19, on the complaint dated 02.05.1997 made by one Narayanamurthy, Chief Manager (Vigilence), Indian Bank, Central Office, No.31, Rajaji Salai, Chennai-1, against A-1 M/s.Enkay Foods Pvt. Ltd., represented by its Director, A2 K.Srinivasa Ragavan and unknown Public Servants and others. The allegation is that A-1 M/s.Enkay Foods Pvt. Ltd., Company submitted an application on 31.03.1992 to the Muthialpet Branch of Indian Bank for sanction of Foreign Bill purchase facility for Rs.1000 lakhs and it was recommended on the same day by the Branch Manager and on 08.05.1992 a facility was sanctioned and out of this sanctioned amount, Rs.500 lakhs was transferred to M/s.Maxwell Exim (P) Ltd., Further, the company was further sanctioned with facilities like PC, FBP, Import LC and Guarantee. As per the sanction ticket the condition is that the Company should create an equitable mortgage of landed properties and equitable mortgage was created even prior to the purchase of the property by the Company and the approved Valuer valued the property at Rs.93.24 lakhs, but the actual value of the property was Rs.8.86 lakhs. Despite unsatisfactory transactions an adhoc FBP of Rs.217 lakhs was sanctioned on 19.07.1995 and the proceeds were transferred to M/s.Maxwell Exim (P) Ltd. A-9 S.Arunachalam, was the Secretary to the Board of Indian Bank from September 1990 to September 1992 and General Manager (Credit), Indian Bank from September 1992 to December 1995.A1 to A19 entered into a criminal conspiracy at Chennai and other places during the period between 1992-1996 and to cheat the Indian Bank by making false representation to the Bank and to commit criminal misconduct and thereby to avial credit facilities by false representation.

4. It is further alleged that the Petitioner/A9 S.Arunachalamthen, then GM dishonestly on 28.12.1992 recommended for Rs.9.50 lakhs FBN/FBP with 5% margin and with DA 150 days and declined to give any other new facilities in view of RBI restrictions (knowing fully well that Rs.242.41 lakhs due from Global Agro Exports). Having recorded the deliberations of Management Committee meeting on 08.05.1992 in his own writings in the rough register, wherein it has been clearly mentioned that performance of the company should be watched and after three months pursue consortium approach for furture, it was A9's primary duty to follow instructions meticulously. Ignoring the earlier decision, A9 had fraudulently recommended to the Board for sanction of Rs.9.5 crores FBP/DA till 31.03.1994. Even without ensuring that the conditions stipulated in the earlier sanction were complied with, A9 fraudulently and dishonestly recommended the proposal to the Board knowing fully well that the funds which were disbursed even before the formal sanction were diverted from the account of Global Agro Exports to other MVR Group of Companies and they were not issued for purpose it was given and he was aware that the firm has not repaid the value of 27 bills to the tune of Rs.242 lakhs till the last moment of the Board Meeting held on 04.01.1993. None of the 27 bills were realised even after the due dates and A9 should have declined the proposal as the company had failed to stick on to the conditions imposed.

5. By the above acts A1 to A19 committed a total wrongful loss of Rs.29,87,09,541/- to the Indian Bank and caused corresponding wrongful gain to them by way of pecuniary advantage. The above acts stated above disclose commission of offences u/s.120B r/w 420 of IPC. Further, in pursuance of the criminal conspiracy, A5 to A12 along with A1 and A4 and A13 to A19, cheated the bank by abusing official position as public servant and caused a wrongful loss to the bank to the tune of Rs.29,87,09,541/- and made a corresponding wrongful gain to them and others and thereby, they committed the offence punishable under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

[*]6. The learned counsel for the petitioner/A-9 would submit that after registration of the case the petitioner/A-9 was let out on bail after furnishing sureties. Thereafter, the trial was conducted and that the petitioner has been convicted as stated above. He would further submit that on a petition being filed, the trial Court had suspended the sentence of imprisonment by four weeks from the date of conviction and that he has also paid the fine amount and he was released on bail.

7. The learned counsel for the petitioner/A-9 would submit that while the petitioner/A-9 was on bail during the trial, he has not misused the liberty granted to him during the trial. He would also submit that there are arguable points available in the appeal and that the petitioner has got a fair chance of succeeding the appeal and would pray that it may take some time for the records to be made ready and the appeal being listed for final hearing. Therefore, he prays for grant of suspension of sentence to the petitioner/A-9.

8. The learned Special Public Prosecutor for CBI Cases has raised objections for suspending the sentence.

9. Taking into consideration, the submissions made by the learned counsels and also considering that there are arguable points available in the appeal, I am inclined to suspend the substantive sentence of imprisonment alone subject to the following conditions that:-

(i) the petitioner/A-9 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 Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai.

(ii) the petitioner/A-9 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/-
15/04/2019

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.

[*]Being Mentioned Order as per order of this Court dated 25/04/2019

TO

1 THE PRINCIPAL SPECIAL JUDGE
FOR CBI CASES[VIII ADDITIONAL CITY CIVIL COURT],CHENNAI

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

3 THE ADDITIONAL SUPERINTENDENT OF POLICE,
SPE-CBI-ACB,
CHENNAI

+1 C.C. to M/S.S.KALYANARAMAN Advocate on payment of necessary charges SR.NO.8419

Order
in
CRL MP.5261/2019
in
CRL A.216/2019

Date :15/04/2019

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RD 22/04/2019

MK:25/04/2019