IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the First day of August Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.10384,10386,10401 and 10420 of 2019

IN CRL.A.NOS.472,474,476 AND 477 OF 2019

PINAKI BHATTACHARYA [PETITIONER IN ALL PETITIONS]

Vs

THE STATE REP BY
THE INSPECTOR OF POLICE,
SPE/CBI/EOW,
CHENNAI.
(CR.NO.RC.5E/2009/CBI/EOW)
CR.NO.RC.4/E/2009-CBI/EOW/CHENNAI
CR.NO.RC.3/E/2009-CBI/EOW/CHENNAI
CR.NO.RC.2/E/2009-CBI/EOW/CHENNAI [RESPONDENT IN ALL PETITIONS]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal Nos.472,474,476 and 477 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the Petitioner/Appellant herein in CC NoS.4,3,2/2010 AND C.C.NO.40/2009 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 criminal appeal and pass such further or other orders.[CRL.MP.NOS.10384,10386,10401 AND 10420/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Appeal Nos.472,474,476 and 477 of 2019 on the file of the High Court and upon hearing the arguments of M/S.JERRY V.V. SUNDAR Advocate for the petitioner[IN ALL THE PETITIONS] and of MR.K.SRINIVASAN SPECIAL PUBLIC PROSECUTOR FOR CBI CASES on behalf of the Respondent[IN ALL THE PETITIONS] the court made the following order:-

1. These miscellaneous petitions have been filed by the Petitioner/appellant/A2, to suspend the sentences of imprisonment imposed in the judgments, dated 31.05.2019, made in CC Nos.4, 3, 2 and 40 of /2010, by the XI Additional Special Judge (Additional Special Sessions Court for CBI cases relating to Banking and Financial Institutions), Chennai, pending disposal of the appeals.
2. The Petitioner/A2 in all these petitions is one and the same person

and he was found guilty of the offences under Sections 120B read with 409, 420, 467, 468, 471, 109 IPC and Section 13[2] read with 13 [1][c] and [d] of the Prevention of the Corruption Act, 1988.

3. In CC.No.4 of 2010, the Petitioner/A2 has been been convicted and sentenced as under:-

S.No	Conviction	Sentence
1.	120B(1) read with 409, 420, 467, 468, 471, 109 IPC and Section 13 [2] read with 13[1][c] and [d] of the PC Act, 1988.	3 years R.I and fine of Rs.50,000/-, with a default sentence of 6 months simple imprisonment.
2.	409 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
3.	467 r/w 471 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
4.	13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
5.	13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.

4. In CC.No.3 of 2010, the Petitioner/A2 has been been convicted and sentenced as under:-

S.No.	Conviction	Sentence
1.	120B(1) read with 409, 420, 467, 468, 471, 109 IPC and Section 13[2] read with 13[1][c] and [d] of the Prevention of the Corruption Act, 1988.	3 years R.I and fine of Rs.25,000/-, with a default sentence of 6 months simple imprisonment.
2.	409 IPC	3 years R.I and fine of Rs.25,000/- with a default sentence of 6 months simple imprisonment.
3.	471 IPC	3 years R.I and fine of Rs.25,000/- with a default sentence of 6 months simple imprisonment.

S.No.	Conviction	Sentence
4.	13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.25,000/- with a default sentence of 6 months simple imprisonment.
5.	13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.25,000/- with a default sentence of 6 months simple imprisonment.

5.In CC.No.2 of 2010, the Petitioner/A2 has been been convicted and sentenced as under:-

S.No.	Conviction	Sentence
1	120B(1) read with 409, 420, 467, 468, 471, 109 IPC and Section 13[2] read with 13[1][c] and [d] of the Prevention of the Corruption Act, 1988	3 years R.I and fine of Rs.50,000/-, with a default sentence of 6 months simple imprisonment.
2.	409 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
3.	471 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
4.	13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
5.	13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.

6.In CC.No.40 of 2010, the Petitioner/A2 has been been convicted and sentenced as under:-

S.No.	Conviction	Sentence
1.	120B(1) read with 409, 420, 467, 468, 471, 109 IPC and Section 13[2] read with 13[1][c] and [d] of the Prevention of the Corruption Act, 1988	3 years R.I and fine of Rs.50,000/-, with a default sentence of 6 months simple imprisonment.

S.No.	Conviction	Sentence
2	409 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
3.	109 r/w 468 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
4.	109 r/w 467 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
5.	471 IPC	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
6.	13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.
7.	13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988	3 years R.I and fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment.

7.In all the cases, viz. CC.Nos.4, 3, 2 and 40 of 2010, the case of the Prosecution against the Petitioner/A2 is that the Petitioner/A2, being the Manager of the defacto complainant Bank, viz. State Bank of Saurashtra, Anna Nagar (now undertaken by the State Bank of India), along with the other accused, namely, A1, A3 and A4 in CC.No.4 of 2010, A1 and A3 in CC.No.3 of 2010, A1, A3 and A4 in CC.No.2 of 2010 and A1, A3 and A4 in CC.No.40 of 2010, had entered into a criminal conspiracy to cheat the defacto complainant Bank, viz. State Bank of Saurashtra and pursuant to such criminal conspiracy, by abusing his Official Power and in contravention of the Rules and Regulations of the Bank, had fabricated documents, viz. salary slips, in respect of individual private persons, who are not eligible for obtaining loans, and without obtaining proper approval for disbursement of bank loans, fraudulently had granted Bank loans, during the period 2005-2007, for the construction of housing flats by A1 in CC.No.4 of 2010 viz. Subash Chandran, Proprietor of M/s.Saravana Foundations, A1 in CC.No.3 of 2010 viz. T.Karthick Prakash, Proprietor of M/s.S.K.Constructions, A1 in CC.No.2 of 2010, viz. P.Vazudi, Proprietor of M/s.Om Ayngaran Foundations, and A1 in CC.No.40 of 2010, viz. N.Ramji, M/s.Balaji Foundations, respectively and the said bank loans were not repaid within the scheduled time and thereby, the Petitioner/A2 dishonestly and fraudulently had cheated the defacto complainant Bank and caused a wrongful loss to the defacto complainant Bank to the tune of Rs.2,24,55,598/- in CC.No.4 of 2010, Rs.2,50,00,000/- in CC.No.3 of 2010, Rs.2,53,00,000/- in CC.No.3 of 2010 and Rs.2,52,92,000/- in CC.No.40 of 2010, respectively and thereby, the Petitioner/A2 committed the offences punishable under Sections 120B read with 409, 420, 467, 468, 471, 109 of IPC and Sections 13(2) read with 13

(1)(c) and (d) of the Prevention of Corruption Act. The Petitioner/A2 was found guilty and convicted and sentenced, in all the cases, by separate judgements, dated 31.05.2019, as stated above.

8. The learned counsel for the Petitioner/appellant/A-2 would submit that in all cases, put together, the petitioner/A2 was directed to pay a total fine amount of Rs.9,75,000/- and that the other accused persons have paid the entire fine amount and their sentences were suspended by the Trial Court and later, this Court had also suspended the substantive sentence of imprisonment alone, pending the appeals and granted bail to them. He would further submit that since the Petitioner/A2 was unable to raise funds and to pay the fine amount, he is suffering incarceration and that the Petitioner being the Manager of the Bank and having come from a different State, based on the recommendation of his subordinates, had granted loans and he had not obtained any pecuniary gain in granting loans. He would further submit that since the Petitioner/A2 is unable to mobilize funds, indulgence may be shown to the Petitioner/A2 to pay only 50% of the fine amount in two installments. He would further submit that there are arguable points available in the appeal and that the Petitioner has got a fair chance of succeeding in the appeals and would pray that the substantive sentence imposed against the Petitioner may be suspended, on payment of only 50% of the fine amount in two installments. In support of his contention, claiming for reduction of payment of the fine amount, pending the appeals, the learned Counsel for the petitioner would rely on the decision of this Court reported in **2016 1 LW Crl. 640 (B.R.Jayanthi Vs. State)**, wherein this Court, relying on the principles laid down in **2007 6 SCC 328 (Dilip S.Dhanukar Vs. Kotak Mahindra Co. and another)**, had suspended the sentence on part payment of fine amount and would seek for suspending the sentence on payment of 50% of the fine amount in two installments.

9. The learned Special Public Prosecutor for the respondent has raised objections for suspending the sentence and would submit that the since the other accused have paid the entire fine amount, their sentences have been suspended and since the Petitioner/A2 did not pay the fine amount, he was not enlarged on bail.

10. The petitioner/A2 has been convicted on 31.05.2018 and he is suffering incarceration for 60 days. The petitioner/A2 is the Manager of the Bank and the other accused have paid the entire fine amount. This Court is of the opinion that it would be reasonable to direct the Petitioner/A2 to deposit 50% of the total fine amount of Rs.9,75,000/-, viz. Rs.4,87,500/-, which is rounded off to Rs.5,00,000/- (Rupees Five Lakhs Only), in two installments. In other words, the sentence of the Petitioner can be suspended on his being permitted to pay 50% of the fine amount imposed by the Trial Court, i.e. Rs.4,87,500/-, which is rounded off to Rs.50,000/-, pending disposal of the appeal, which shall be deposited by the Petitioner/A2 in two installments.

11. Accordingly, in all these petitions, the substantive sentences of imprisonment alone imposed on the Petitioner/A2 by the Trial Court, in all the cases, is hereby suspended till the disposal of the appeals and the Petitioner/A2 is ordered to be enlarged on

bail on conditions (1) that the petitioner/A2 shall execute a bond, in each cases, each for a sum of Rs.50,000/- [Rupees Fifty thousand only] with two sureties each for a like sum to the satisfaction of XI Additional Special Judge (Additional Special Sessions Court for CBI cases relating to Banking and Financial Institutions), Chennai, (2) that the Petitioner/A2 shall deposit a fine amount of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) at the time furnishing sureties and on such deposit, he shall be enlarged on bail, (3) further the Petitioner/A2 shall pay the balance of fine amount Rs.2,50,000/- (Rupees two lakhs fifty thousand only), within one month thereafter and (4) that the Petitioner/appellant/A-2 shall report before the trial Court on the first working day of every English Calendar month at 10.30 a.m., pending the appeals. If the balance fine amount of Rs.2,50,000/- is not deposited, as per the schedule mentioned above, the suspension of sentence granted in all these petitions shall stand cancelled automatically, without any further reference to this Court.

-sd/-
01/08/2019

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 XI ADDITIONAL SESSIONS JUDGE
SPECIAL JUDGE FOR CBI CASES RELATING TO
BANKING AND FINANCIAL INSITUTIONS AT CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON,PUZHAL

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

4 THE STATE REP BY
THE INSPECTOR OF POLICE,
SPE/CBI/EOW, CHENNAI.

+1 C.C. to M/S.JERRY V.V. SUNDAR Advocate on payment of necessary charges SR.NO. 15927

Order

in

CRL MP.10384,10386,10401 AND 10420/2019

IN CRL.A.NOS.472,474,476 AND 477 OF 2019

Date :01/08/2019

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

RD 06/08/2019