

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twentieth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL MISCELLANEOUS PETITION No.18832 of 2019

IN CRL.A.NO.901 OF 2019

1 K.NAGENDRAN
2 K.KARUPPAIAH

[PETITIONERS]

Vs

STATE REP BY
INSPECTOR OF POLICE,
CBI/ACB/CHENNAI,
SASTRI BHAVAN,
HADDOWS ROAD, NUNGAMBAKKAM.
R.C.NO.35/A/2005 AND R.C.NO.36/A/2005.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.901/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in CC NO.6/2006 dated 28.11.2019 by the II Additional District Judge for CBI Cases, Coimbatore and enlarge the petitioners/appellants on bail, pending disposal of the above Criminal Appeal.[CRL.MP.NO.18832/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.901/2019 on the file of the High Court and upon hearing the arguments of M/S.L.P.BALAJI RAM 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:-

Petitioners were convicted for offences under Sections 120-B r/w.419, 420, 467, 467 r/w. 468, 468 r/w.471 IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and for the substantive offences punishable u/s.467 r/w 471 (2 counts), 109 r/w 419 (2 counts), 420 (2 counts) IPC and sentenced to undergo Rigorous Imprisonment for two years each and to pay a fine of Rs.10,000/- each in default to undergo Simple Imprisonment for six months each, for the offence punishable u/w.120-B r/w 419, 420, 467, 467 r/w 468, 468 r/w 471 IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988, and are also convicted and sentenced to undergo

Rigorous Imprisonment for tow years each and to pay a fine of Rs.10,000/- each in default to undergo Simple Imprisonment for six months each for the each count of the each substantive offences punishable u/s. 467 r/w 471(2 counts), 109 r/w 419 (2 counts), 420 (2 counts) IPC. Total Fine imposed is Rs.70,000/- each by the learned II Additional District Judge for CBI cases, Coimbatore in C.C.No.6 of 2006 on 28.11.2019.

2.The learned counsel appearing for the appellants would submit that the appellants are not public servants. He would further submit that they have paid the fine amount of Rs.70,000/- each vide receipt Nos.191020 and 191021 respectively dated 28.11.2019. He would further submit that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's surrender or being in confinement in availing the relief of suspension of sentence under Section 397 Cr.P.C. In exercise of revisional powers by this Court. The decisions of the Hon'ble Apex Court in **BIHARI PRASAD SINGH VS. STATE OF BIHAR AND ANOTHER (2000 SCC(Cri)1380)** and that of the **IBRAHIM VS. STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3.Heard the learned counsel for the appellant as well as the learned Special Public Prosecutor (CBI Cases).

4.The above decisions have been relied upon time and again by this Court towards reaching the conclusion that in moving an appeal against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Appeal.

5.Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal as contended by learned counsel for appellant and further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the appellant herein is entitled to the relief of grant of suspension of sentence.

6.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh Only) each within a period of three weeks from the date of receipt of a copy of this order to the credit of C.C.No.6 of 2006 on the file of the learned II Additional District Judge for CBI Cases, Coimbatore, failing which, the suspension of substantive sentence of imprisonment alone granted today, shall stand automatically vacated, without any further reference to this Court and on further condition that the the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only)each with two sureties each for a like sum to the satisfaction of the learned II Additional District Judge for CBI Cases, Coimbatore and on further

condition that the petitioners shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
20/12/2019

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 II ADDITIONAL DISTRICT
JUDGE FOR CBI CASES, COIMBATORE

2 THE SPECIAL PUBLIC PROSECUTOR
HIGH COURT, MADRAS

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
CBI/ACB/CHENNAI, SASTRI BHAVAN,
HADDOWS ROAD, NUNGAMBAKKAM.

+1 C.C. to M/S.A.V.SOMASUNDARAM Advocate on payment of
necessary charges SR.NO. 26451

सत्यमेव जयते Order

in
CRL MP.18832/2019

IN CRL.A.NO.901 OF 2019

Date : 20/12/2019

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RD 27/12/2019