IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Second day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.1948 of 2020

IN CRL A.103/2020

V.VENKATESAN [PETITIONER]

Vs

THE STATE BY [RESPONDENT]
INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION WING,
SALEM, SALEM DISTRICT.
CR.NO.1/AC/2011.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.103/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the judgment dated 27.01.2020 made in Special CC No.68/2014 on the file the learned Specail Judge, (Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and enlarge the petitioner on bail,pending disposal of the above criminal appeal.[CRL.MP.NO.1948/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.103/2020 on the file of the High Court and upon hearing the arguments of M/S.N.MANOHARAN, Advocate for the petitioner and of MR.S.KARTHIKEYAN ADDL.PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Criminal Appeal has been filed by the petitioner against the Judgment of conviction and sentence passed by the learned Special Judge, Special Court for Trial of cases under the Prevention of Corruption Act, Salem dated 27.01.2020 in Special C.C.No.68 of 2014. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	***Conviction***	***Sentence***
Petitioner	Convicted for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months for the offence under Section 7 of the Prevention of Corruption Act, 1988 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of six months.

Total fine imposed against the petitioner is Rs.15,000/- (Rupees fifteen thousand only).

2.The gist of the case is as follows:-

The petitioner was working as VAO, Nadupatti Village, Omalur Taluk, Salem from 13.06.2008 to 05.01.2011 and he was a public servant. On 28.12.2010 at about 11.30 hrs in front of his office, he had demanded a sum of Rs.12,000/- as illegal gratification from the defacto complainant for giving his verification statement before the Revenue Inspector for patta Transfer petitions, which were submitted by the defacto complainant for his land and his father's land. Again on 03.01.2011 at about 16.30 hrs when the defacto complainant met the petitioner in front of Taluk Office, Omalur, the petitioner reiterated his earlier demand and reduced to pay a sum of Rs.6,000/- on 05.01.2011 at his residence, as illegal gratification other that legal remuneration as a motive or reward for doing his official act. Further, the petitioner, who had received the Patta Transfer Petition on 28.12.2010, have concealed the same. In pursuance of aforesaid demands of illegal gratification, that on 05.01.2011 between 08.30 hrs and 08.45 hrs, the petitioner had reiterated his earlier demand and obtained the tainted money Rs.6,000/- from the defacto complainant at his residence in the presence of accompanying official witnesses. Hence, the accused has been charged and convicted cited supra.

3.The learned counsel for the petitioner submitted that the trap dated 05.01.2011 was based on the complaint of PW2 on 04.01.2011. The grievance of PW2 was that for change of patta, he said to have given an application dated 27.12.2010 to the petitioner on 28.12.2010, for which the demand is said to have made. According to the petitioner, the application dated 27.12.2020 had not been produced in this case and a photostatc copy of the application has been produced. The contention of the respondent that the petitioner had destroyed the application dated 27.12.2010 cannot be countenanced and the prosecution ought to have produced the original application form. He further submitted that the accompanying witnesses are PW3 and LW4, in which LW4 has not been examined in this case and PW3 in his evidence, had not corroborated PW2 on material aspects of the case.

4.The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.15,000/- (Rupees fifteen thousand only) on 27.01.2020 and he was on bail during investigation and trial. Further, the petitioner has arguable points and fair chance of success in this appeal. The trial Court was pleased to suspend the sentence of imprisonment till 26.02.2020. Thus, he prayed for Suspension of Substantive Sentence of Imprisonment imposed on him till the disposal of the appeal.

5.The learned Additional Public Prosecutor submitted that the trial Court appears to have been obsessed by the fact of the trap proceedings, during the course of which, the amount of Rs.6,000/- recovered from the petitioner and proved the guilt of the petitioner due to the result of the chemical re-action as Phenolphthalein test proved positive and the prosecution has successfully discharged its burden of proving that the accused accepted the amount other than the legal remuneration.

6.The learned Additional Public Prosecutor further submitted that the trial Court, on consideration of the gravity of the offence, had reached its conclusion holding that the petitioner was guilty of the aforesaid offences. Hence he opposed to grant suspension of sentence of the petitioner. He would further submit that the sentence imposed on the petitioner has been suspended by the trial court till 26.02.2020.

7.Considering the facts and circumstances of the case and nature of the offence and also taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up, this Court is inclined to suspend Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Special Judge, Special Court for Trial of cases under the

Prevention of Corruption Act, Salem.

9.Further, the petitioner is directed to appear before the trial Court on the first working day of every English month at 10.30 a.m., until further orders.

-sd/-
02/03/2020

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 SPECIAL JUDGE SPECIAL COURT FOR TRIAL OF CASES UNDER THE PREVENTION OF CORRUPTION ACT SALEM

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION WING,
SALEM, SALEM DISTRICT.

+1 C.C. to M/S.N.MANOHARAN Advocate on payment of necessary charges SR.NO. 4177

Order
in
CRL MP.1948/2020
in
CRL A.103/2020

Date :02/03/2020

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RD 02/03/2020