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.2766 of 2020

IN CRL A.148/2020

A.UDHAYAKUMAR [PETITIONER]

Vs

THE STATE REP BY [RESPONDENT]
INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
COIMBATORE,
CR.NO.3/2011/AC/CB.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.148/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on him by the Learned Chief Judicial Magistrate, Special Court for Trial of Prevention of Corruption Act, Tiruppur by Judgment dated 31.01.2020 made in Special CC No.35/2014 and enlarge the petitioner on bail, pending disposal of the criminal Appeal. [CRL.MP.NO.2766/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.148/2020 on the file of the High Court and upon hearing the arguments of M/S.B.KUMARASAMY, Advocate for the petitioner and of MR.S.KARTHIKEYAN ADDL.PUBLIC PROSECUTOR FOR[V AND AC] 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 Chief Judicial Magistrate, Special Court for trial of Prevention of Corruption Act, Tiruppur dated 31.01.2020 in Special C.C.No.35 of 2014. The conviction and sentence imposed by the trial court are as follows:-

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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 two years and to pay a fine of Rs.2,500/-, in default to undergo rigorous 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.2,500/-, in default to undergo rigorous imprisonment for a period of three months.

Total fine imposed against the petitioner is Rs.5,000/- (Rupees five thousand only).

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

PW1/defacto complainant, who is a handloom weaving worker, bought 2 ¾ cents of land along with a terrace house at Perumanallur from one Mohammed of Perumanallur and the house is partitioned in two portions and has two electric lines which are in the name of the said Mohammed. PW1 approached the petitioner/VAO on 07.03.2011 for patta name transfer in order to change the electric lines to his house portion. On the instructions of the petitioner, PW1 approached the Taluk Office and remitted Rs.40/- and obtained computer patta, RSR and EC from SRO, Avinashi. On 10.03.2011 at 14.00 hrs, PW1 met the petitioner with the above mentioned certificates and requested for patta transfer, for which the petitioner demanded Rs.5,000/- as illegal gratification. Then the petitioner instructed PW1 to register his application in Avinashi Taluk Office. On 14.03.2011, PW1 went to Avinashi Taluk Office and registered the patta transfer application at the Taluk Office and then approached the petitioner on the same day afternoon for patta name transfer and the petitioner reiterated his earlier demand of Rs.5,000/- as illegal gratification and strictly instructed PW1 to meet him with bribe amount of Rs.5,000/- at his office before 12.00 hrs on 16.03.2011. In pursuance of the above said demand, the petitioner demanded and

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accepted the bribe of Rs.5,000/- from PW1 on 16.03.2011 at his Office in the presence of accompanied official witness T.Rameshkumar as a motive or reward for recommending PW1's application for patta name transfer.

3.The learned counsel for the petitioner submitted that if the first demand was made on 10.03.2011, the defacto complainant/PW1 ought to have made a complaint with the Tahsildar while he submitting the documents for transfer of patta, but the petitioner had made a complaint on 16.03.2011 and in which he has not mentioned the earlier demand made on 10.03.2011. He further submitted that during the trap the money was not recovered from the petitioner in person and no preliminary enquiry was done by the trap laying officer. He further submitted that PW1 visited the petitioner to process the application for transfer of patta, which was refused and hence, he had a motive to implicate the petitioner. The petitioner is not an issuing authority for granting patta and he further contended that during the trap Ex.P2 was not in existance and it was PW8, who had written the complaint on behalf of PW1 after the trap.

4.The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.5,000/- (Rupees five thousand only) on 31.01.2020 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 02.03.2020. 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 all the witnesses have categorically stated that the petitioner received the tainted money in his right hand and counted the same and put in his right side pant pocket. He further submitted that the demand and acceptance of illegal gratification was established by the prosecution and phenolphthalein test has also been proved positive against the petitioner.

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 02.03.2020.

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 her 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

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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 Chief Judicial Magistrate, Special Court for trial of Prevention of Corruption Act, Tiruppur.

9.Further, the petitioner is directed to appear before the trial Court on the first working day of the 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 CHIEF JUDICIAL MAGISTRATE
SPECIAL COURT FOR TRIAL OF PREVENTION OF
CORRUPTION ACT,TIRUPPUR

2 THE PUBLIC PROSECUTOR
(V AND AC) HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
COIMBATORE,

+1 C.C. to M/S.B.KUMARASAMY Advocate on payment of necessary charges SR.NO. 4205

Order

in
CRL MP.2766/2020

in
CRL A.148/2020

Date :02/03/2020

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RD 02/03/2020

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