IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Nineteenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3023 of 2020

IN CRL A.163/2020

PARDEEP KUMAR [PETITIONER / APPELLANT]

Vs

THE STATE REP.BY [RESPONDENT]
THE INSPECTOR OF POLICE, SPE,
CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH,
SHASTRI BHAVAN, HADDOWS ROAD,
CHENNAI-600 006.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.163/2020 on the file of the High Court, the High Court will be pleased to suspend the order of conviction passed against the Petitioner/Appellant by the learned XIIth Additional Special Judge for CBI Cases, City Civil Court, Chennai-104 in CC.No.12/2014 convicting the Petitioner/Accused and sentencing him to undergo Rigorous imprisonment for 4 years for the offence u/s 7 and Sec.13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 and to pay a fine of Rs.25,000/- in default to undergo Rigorous imprisonment for one year and under Section 7 of the PC Act 1988 three years Rigorous imprisonment and fine of Rs.10,000/- and in default to undergo Rigorous imprisonment for nine months and both the sentences to run concurrently and enlarge the CRL A.163/2020 [IN CRL.MP.NO.3023 OF 2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CCRL A.163/2020 on the file of the High Court and upon hearing the arguments of M/S.V.S.VENKATESH, 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:-

This Criminal Appeal has been filed by the petitioner against the Judgment of conviction and sentence passed by the learned XIV Additional Special Judge for CBI Cases, FAC-XII Additional Special Court CBI Cases, Chennai dated 24.01.2020 in C.C.No.12 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 four years and to pay a fine of Rs.25,000/-, in default to undergo rigorous imprisonment for one year for the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 7 of the Prevention of Corruption Act, 1988, the petitioner was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of nine months.

Total fine imposed against the petitioner is Rs.35,000/- (Rupees thirty thousand only). From the date of the Judgment, he has been in confinement and now he seeks to suspend the sentence and bail.

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

During February 2014, the petitioner was working as Examining Officer in Customs, Seaport, Chennai and thereafter he was posted as Examining Officer of Customs at the Container Freight Station (CFS) at SICAL Distriparks Limited and D.R.Logistics Private Limited, Minjur. The petitioner had entered into a conspiracy with Approver K.Shiva @ K.Meghanathan/PW3 to do an illegal act of demand and acceptance of illegal gratification of Rs.5,000/- other than legal remuneration. On 22.02.2014 from T.Suresh/PW2 as a motive or reward for the petitioner for not making any remarks in the Examination report for releasing the consignment. In pursuance of the conspiracy, on the instructions of the petitioner the Approver Shiva @ Meghanathan accepted the illegal gratification of Rs.5,000/- from K.T.Suresh/defacto complainant, counted the same with both hands and kept it in his right side pant pocket in presence of the independent witnesses K.V.Ramakrishna/PW4. At that time, K.Siva @ Meghanathan/PW3 was caught red handed by Surya Kumar/Trap Laying Officer. Thereafter, the right and left hands of the petitioner was subjected to wash in colourless sodium carbonate solution, which turned pink in colour and the said Approver Shiva @ Meghanathan/PW3 admitted in presence of the two witnesses that he used to receive money from the importors/CHA's as instructed by the Examining Officer/petitioner and later in the evening would hand over that days collection to the petitioner, commission would be paid to him. The petitioner as well as the said Siva @ Meghanathan/PW3 were arrested and the tainted currency notes of Rs.5,000/- was recovered. On completion of the investigation charge sheet was filed before the trial Court.

3.During the trial, the prosecution examined 14 witnesses, marked 23 documents and collected 7 material objects and on the side of the defence, 5 documents were marked. The trial Court on analysis of the evidence and materials produced had convicted the petitioner as above

4.The learned counsel for the petitioner submitted that the trial Court had failed to consider even a single line in the cross examination and had merely gone with the chief examination of the witnesses. Thereby making the trial a negatory and farce. The finding of the trial Court is totally against the material evidence both oral and documentary. Further, no demand as well as recovery were made from the petitioner. The trial Court failed to consider that the evidence of PW3/Approver is a tainted one, more so, in this case he had been taken as an Approver after his discharge petition [Ex.P2]. These facts have not been considered by the trial Court. The entire case inges on the tainted evidence of PW3.

5.PW4 the accompanying witness admits that he was asked to stand outside and hence, he was not privy to what has happened inside the room of the petitioner. The trial Court failed to reason out why PW3 has to receive the money outside the cabin of the petitioner. If at the instance of the petitioner PW3 wants to receive the money, the same could have been done inside the cabin in secrecy. Thus the entire demand, receipt of money and recovery which had taken outside the cabin of the petitioner is a stage managed one.

6.PW2 the decoy had imported materials on examination later the goods were permitted to be cleared even before the trap. There is no reason for the petitioner to demand any bribe money. The lower Court failed to consider that the petitioner was recently transferred from Delhi and joined as Examining Officer in Minjur weeks prior to the trap. Further the petitioner was not conversant with the local language and he had no acquittance with PW3 to repose confidence on him.

7.The learned counsel for the petitioner further submitted that the trap laying officer somehow wanted to conduct raid in the customs department and without any proper verification to find out the antecedent of the petitioner, which is an indispensable act so that innocent public servants are not victimized. In this case, the admitted fact is that the petitioner hails from Delhi and joined duty one week prior to the trap.

8.The learned counsel for the petitioner further submitted that the trial Court believing the theory of the prosecution would lead to dangerous consequences, anybody and everybody who are not amenable or acceptable, then any person can be set up as receiver of trap amount and thereafter making that person an Approver and implicate any one as co-conspirator in receipt of bribe money. The petitioner is the only son of his parents and his mother is a cancer patient his father is partly blind and as only son he has to take care of his sickly parents. The petitioner's parents are resident of Delhi. The petitioner absence would further deteriorate their health condition.

9.The learned Special Public Prosecutor appearing for the respondent submitted that PW3 had clearly spoken about he receiving bribe amount on behalf of the petitioner and also stated about he received the bribe amount from PW2. PW3 was called inside the cabin by the petitioner and PW2 was directed to handed over the bribe money to PW3. Thereafter, PW2 handed over the cash to PW3, which was received by PW3 on behalf of the petitioner in the presence of independent witness PW4. PW10, the Trap Laying Officer reached the scene of occurrence, conducted phenolphthalein test and it turned positive. PW3 admitted about he receiving the money on behalf of the petitioner. Both the accused were arrested, trap money was recovered and investigation was conducted and the officials from customs department were examined, who had clearly stated about the procedures in examining the goods and the petitioner examining the goods of PW2. Further, the forensic report is in the favour of the prosecution. Thereafter, PW3 who is privy to the happenings had confirmed the same in his evidence. Further, the evidence of PW3 corroborated by the evidence of PW2 and PW4. The trial Court on proper analysis of materials and documents produced had rightly convicted the petitioner. The learned Special Public Prosecutor objected to grant of bail.

10.Considering the rival submission and on perusal of the materials it is seen that this case proceeds on the evidence of PW3 Approver. The evidence of PW3 has to be considered with caution though it is not a rule. Approver evidence alone is sufficient if it inspires confidence. In this case PW3 prior to being taken as Approver he had participated in the trial and he had filed a bail application and discharge petition [Ex.D1 & Ex.D2], wherein he had clearly disputed the case of the prosecution distanced himself from all the offences and his role, which is contrary to his evidence. He clearly disputed about acting as agent and petitioner directing him to receive the bribe amount. As per Ex.D2, PW3 had disputed and disowned the entire case of the prosecution against him. In such circumstances, the evidence of PW3 has to be looked and analyzed with care and caution and to see whether it undergoes the test of credibility, coupled with the fact that the petitioner recently joined in Minjur, Chennai as Examining Officer in the Customs Department. In such circumstances, the acquittance with PW3 becomes a questionable one. PW4 was asked to stand outside the room and the demand becomes doubtful. Further, the appeal is a statutory appeal in which the above points to be decided.

11.Considering the special circumstances 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.

12.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 XIV Additional Special Judge for CBI Cases, FAC-XII Additional Special Court CBI Cases, Chennai

13.Further, the petitioner is directed to appear before the trial Court once in three months on the first working day of January, March, June, September, December at 10.30 a.m., until further orders.

-sd/-
19/03/2020

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 XIV ADDITIONAL SPECIAL
JUDGE FOR CBI CASES, FAC-XII ADDITIONAL
SPECIAL COURT CBI CASES, CHENNAI.

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

3 THE INSPECTOR OF POLICE, SPE,
CENTRAL BUREAU OF INVESTIGATION ANTI CORRUPTION BRANCH,
SHASTRI BHAVAN, HADDOWS ROAD,
CHENNAI-600 006.

+1C.C. to M/S.V.S.VENKATESH Advocate on payment of necessary charges SR NO.5372

Order

in

CRL MP.3023/2020

in

CRL A.163/2020

Date :19/03/2020

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

MK:19/03/2020