

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No. 14617 of 2020

Mr.Ajit Kumar Sohanlal Jai,
S/o.Sohanlal Jain,
R/o.No.301, 3rd Floor, Konark Royal,
Rama Bai Chemburkar Marg,
Near Sun City Theater,
Vile Parle (East) Mumbai,
Pin - 400 057.Petitioner

-Vs-

State rep by,
Inspector of Police,
Central Bureau of Investigation,
Bank Securities & Fraud Cell,
Bangalore. Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the learned Trial Court of XI Additional Sessions Judge at Chennai for CBI Cases to pass on order in M.P.No.800 of 2015 in C.C.No.3 of 2015 through online medium and expedite or within time framed by this Court.

For Petitioner : Mr.M.Anandaraaj

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

सत्यमेव जयते

O R D E R

The petitioner who is arrayed as A4 in C.C.No.3 of 2015 had volunteered to become an approver. The respondent / CBI having no objection for the same and in the instance of CBI, the petitioner's 164 statement was recorded on 04.02.2015. Thereafter, a petition was filed by the respondent / CBI for tender of pardon to the petitioner / A4 which was taken on file in Crl.M.P.No.800 of 2015 which is kept pending from 06.02.2015 and hence, sought for a direction to dispose and expedite the proceedings within a time frame.

2. The brief facts of the case is that the Deputy General Manager, Canara Bank, Circle office, Chennai had lodged the complaint to Central Crime Branch, Chennai, during the year 2013 against the accused for defrauding Canara Bank to the tune of Rs.19 Crores. The then Chief Manager, Canara Bank, SME Branch, Ambattur, in violation of the guidelines of the bank by abusing his official position, permitted over drawing / TODs in the account of M/s. Future Techniks Private Ltd., Chennai, to the extent of Rs.19 Crores based on the request of M/s.Future Techniks Private Ltd., which was promoted by A1 Balasubramanian and his wife Chitra Balasubramanian and funds was availed in the name of the said company were transferred to the account of various private companies at Mumbai, failed to repay the loan and thereby caused a loss of Rs.19 Crores as on 19.03.2013 to Canara Bank.

3. On completion of investigation, charge sheet was filed before the lower Court which was taken on file in C.C.No.3 of 2015 and thereafter, CBI had filed a petition in CrI.M.P.No.800 of 2015 for seeking tender of pardon to A4 to take him as approver. This petition is kept pending from the year 2015, hence the above petition seeking direction to expedite the proceedings.

4. The contention of the petitioner is that he had facilitated the other accused namely A3 in handing over the funds for a small commission. The petitioner on application of the investigation officer had received a communication from VII Metropolitan Magistrate, George Town, Chennai, who recorded the statement of the petitioner under Section 164 Cr.P.C. on 04.02.2015. The petitioner is inclined to adduce evidence in favour of the prosecution. In a statement before the Magistrate he had clearly admitted about the complexity of the petitioner with the other accused and further the petitioner had paid back the amount of Rs.63 lakhs which he set to have been benefited in the transaction. Thereafter, on receipt of summons he had appeared before the trial Court in C.C.No.3 of 2015 and the prosecution had filed a petition in CrI.M.P.No.800 of 2015 on 06.02.2015 seeking tender of pardon. The trial Court had ordered notice to the other four accused namely, A1 being Managing Director of A5 Future Techniks Private Ltd., the then Chief Manager of Ambattur Branch, A3 Sukash Chandrashekar, who is now presently confined in Central Prison, Tihar, Delhi, in connection with other cases. The accused A1 and A5 had filed their counter and made their submission. A2 had also made his submissions. A3 in this case who is confined in Central Prison, Tihar, had not been appearing even through video conferencing, despite the trial Court insisting the Jail authority to produce him on the hearing dates, his appearance before the trial Court on the hearing dates is on and off and due to that reason the

trial Court is unable to dispose of Crl.M.P.No.800 of 2015. Further in this case, the trial Court was pleased to hear the arguments of the petitioner as well as the accused on 05.03.2020 and posted Crl.M.P.No 800 of 2015 for orders on 09.04.2020 and thereafter, due to sudden lockdown announced on 23.03.2020, the case has been periodically adjourned. Lastly, the case came up on 15.09.2020 and now the case is posted to 14.10.2020. Further relying upon the decision of the Apex Court in 2001 (7) SCC 318 in the case Anil Rai Vs. State of Bihar, wherein the Apex Court had given a time limit to dispose of Criminal Cases and if it is not done so, the parties concern to file an application before the High Court. Hence the above petition filed by the petitioner.

5. Learned Special Public Prosecutor appearing on behalf of the respondent submits that Crl.M.P.No.800 of 2015 has been filed by the CBI seeking tender of pardon to the petitioner / A4 herein. He further submitted that the petitioner is arrayed as A4 in C.C.No.3 of 2015 had appeared before the VII Metropolitan Magistrate on 04.02.2015 and his statement under 164 Cr.P.C., has been recorded. The lower court in Crl.M.P.No.800 of 2015 ought not to have ordered notice to the co-accused in this case, since the tender of pardon is a prerogative of the trial Court, any how in this case notice have been ordered and thereafter, all the accused in this case have advanced their arguments on 05.03.2020 and Crl.M.P.No.800 of 2015 was posted for orders on 09.04.2020. Thereafter, due to Covid-19 pandemic situation, lockdown of Courts was announced on 23.03.2020 and thereafter, the case has been periodically adjourned. Now, the functioning of the Courts have been restored partially. In view of the same, he submitted that it would be suffice that this Court directs the trial Court to pronounce orders in Crl.M.P.No.800 of 2015 within a stipulated time. Further submitted that in this case, the accused A3 who is now confined in Tihar Jail has not been produced before the trial Court even through video conferencing, despite the specific orders of the trial Court to produce him for the hearing dates and he sought a direction in this regard and also a direction to complete the trial within a stipulated period since the C.C. is of the year 2015.

6. Considering the submissions and perusal of materials, it is seen that Lower Court had already heard the arguments of the concerned in Crl.M.P.No.800 of 2015 on 05.03.2020 and only orders are to be pronounced. Granting of tender of pardon is a prerogative of the Special Judge as per Section 5(2) and as per Section 307 Cr.P.C., nowhere it is stated that before granting tender of pardon the co-accused have to be heard, any how, this Court is not going into these aspects as already the co-accused in this case have been heard, it is for the trial Court to pass appropriate orders on the petition seeking tender of pardon.

7. In view of the same, the trial Court is directed to pass orders in CrI.M.P.No.800 of 2015 within a period of two weeks from the date of receipt of a copy of this order. The Superintendent, Central Prison, Tihar Jail, New Delhi, is directed to produce Sukash Chandrasekar S/o. V.Chandrashekar [A3] who is confined in Central Prison, Tihar, through Video conferencing or in person as and when required in the case. The non appearance and non production of A3 is causing delay in progress of trial in C.C.No.3 of 2015. The Superintendent of Central Prison, Tihar Jail, New Delhi, is reminded of his obligation and duty to co-operate for speedy disposal of criminal cases, more so, in the case of Prevention of Corruption Act. The delay would attribute to violation of fundamental rights and Article 21 of Constitution of India. This Court hopes in future, the Superintendent of Central Prison, Tihar Jail, Delhi, to follow the direction of the trial Court by producing Sukash Chandrasekar S/o. V.Chandrashekar [A3], before the trial Court as and when required.

8. With the above observation, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Central Bureau of Investigation,
Bank Securities & Fraud Cell,
Banglore.
2. The Superintend of Central Prison,
Tihar Jail,
New Delhi.
3. The Special Public Prosecutor,
CBI Cases, High Court,
Madras-104.

CrI.O.P.No. 14617 of 2020

SSV(CO)
GN(02/11/2020)