IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fifteenth day of February Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION Nos.1176,1272 & 1360 of 2021

in CRL.A.52,56 & 58 OF 2021

V.R.RADHAKRISHNAN [PETITIONER APPELLANT/ACCUSED 1 IN CRL.MP.No.1176/2021 IN CRL.A.52 OF 2021]

A.SYED FAROUK [PETITIONER APPELLANT/ACCUSED 1 IN CRL.MP.No.1272/2021 IN CRL.A.56 OF 2021]

P.SAMPATH KUMAR [PETITIONER APPELLANT/ IN CRL.MP.No.1360/2021 IN CRL.A.58 OF 2021]

Vs

STATE BY
INSPECTOR OF POLICE,
SPE / CBI / ACB/
CHENNAI.
CBI/ACB/CHENNAI
RC MA1/2006 / (A) / 0022. [CRL.A.Nos.52 & 58 OF 2021]
RC MA1/2002 / (A) / 0020. [CRL.A.56 OF 2021]

[RESPONDENT IN ALL THE PETITIONS]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.Nos.52,56 & 58 of 2021 on the file of the High Court, the High Court will be pleased to

(i)suspend the sentence imposed in C.C.No.02/2008 on the file of the learned II Additional District Judge for CBI Cases, Coimbatore by the judgment dated 20.01.2021 against the petitioner and release him on bail(IN CRL.MP.No.1176 OF 2021)

(ii)suspend the sentences and enlarge the petitioner on bail in C.C.No.02 of 2008 Judgement dated 20.01.2021 and on the file of the Learned II Additional District Judge (CBI Cases), Coimbatore pending disposal of the Crl.A.56 of 2021.(IN CRL.MP.No.1272 OF 2021)

(iii)suspend the sentence imposed by the learned II Additional District Judge (CBI Cases), Coimbatore by a Judgment dated 20.01.2021 in CC.No.2 of 2008 and grant bail to the petitioner pending disposal of the Crl.A.58 of 2021.(IN CRL.MP.No.1360 OF 2021)

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.A.Nos.52,56 & 58 of 2021 on the file of the High Court and upon hearing the arguments of M/S. SUNDER MOHAN,(IN CRL.A.52/2021),M/S VENKATESH.S.,(IN CRL.A.56/2021)AND M/S A.RAMKUMAR,(IN CRL.A.58/2021) Advocate for the petitioners and of M/S K.SRINIVASAN, SPECIAL PUBLIC PROSECTOR FOR CBI CASES on behalf of the Respondent the court made the following order:-

These Criminal Miscellaneous Petitions have been filed by the petitioners/Appellants to suspend the sentence passed in C.C.No.2 of 2008 dated 20.01.2021 on the file of II Additional District Court for C.B.I. Cases, Coimbatore, pending disposal of the Criminal Appeals.

2. The petitioners/appellants herein are the accused in C.C.No.2 of 2008 on the file of II Additional District Court for C.B.I. Cases, Coimbatore and they have been convicted and sentenced as under:

The petitioner/Appellant in Crl.MP.No.1176 of 2021 in Crl.A.Nos.52 2021 has been convicted and sentenced as under;

S.No.	Conviction	Sentence
1.	U/s. 120-B read with 409, 420, 467, 468, 471 and 477-A IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988	3 years R.I. and fine of Rs.30,000/- in default to undergo S.I for Six Months .
2.	U/s. 409, 420, 468 read with 471 and 477-A IPC and Section 13(2) read with 13(1) (c) and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988	3 years R.I. and fine of Rs.30,000/- in default to undergo S.I. for Six Months for each of the substantive offence

The petitioner/Appellant in Crl.MP.No.1360 of 2021 in Crl.A.Nos.58 2021 has been convicted and sentenced as under;

S.No.	Conviction	Sentence
1.	U/s. 120-B read with 409, 420, 467, 468, 471 and 477-A IPC and Section 13(2) read with 3(1)(d) of the Prevention of Corruption Act, 1988	3 years R.I. and fine of Rs.50,000/- in default to undergo S.I for Six Months .
2.	U/s.420, 467, 468, 468 read with 471 IPC	3 years R.I. and fine of Rs.50,000/- in default to undergo S.I. for Six Months for each of the substantive offences.

The petitioner in Crl.MP.No.1272 in Crl.A.No.56 2021 has been convicted and sentenced as under;

S.No.	Conviction	Sentence
1.	U/s. 120-B read with 409, 420, 467, 468, 471 and 477-A IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988	3 years R.I. and fine of Rs.25,000/- in default to undergo S.I for Six Months .
2.	U/s.420 IPC	3 years R.I. and fine of Rs.25,000/- in default to undergo S.I. for Six Months .

3.The sentences were ordered to run concurrently. Aggrieved against the same, the petitioners/Appellants have preferred the Criminal Appeals. Pending in Criminal Appeals, the Petitioners/Appellants have filed the present Criminal Miscellaneous Petitions, seeking for suspension of sentence.

4. The case of the prosecution is that the first accused was working as a Senior Branch Manager in the Vijaya Bank, Tirupur Branch, during the period May 2003 to May 2006 and as a Branch Head, he was empowered to sanction pre-shipment and post shipment credits within the sanctioned limits for the exporters. A2/R.Uma Maheshwari was working as a Forex Officer in the same branch from May 2000 to December 2005 and as a Forex Officer, she had responsibilities to scrutinize the export documents presented by the exporters availing pre-shipment and post-shipment credits and she has to maintain all Forex registers in respect of Forex Transactions. A3/P.Sampath Kumar is one of the partners of M/s. Sigma Garments, a knitted-garments Export firm and he was exclusively managing all the business affairs of the Banking operations of M/s.Sigma garments during the relevant period and A4/Syed Farouk was maintaining the business affairs and banking operations of M/s.V.F.International, a knitted-garments Export firm during the relevant period. The allegation against them is that during the period between May 2003 to December 2006, the accused entered into criminal conspiracy and in order to adjust the overdue of AAEBR liability, violated the Bank norms and by fabrication of documents had cheated the bank to the tune of Rs.52.31 lakhs by various transactions. Based on a information, the case was registered and the final report was filed and the accused were charged for offences under Sections 120-B read with 409, 420, 467, 468, 471 and 477-A IPC and Section 13(2) read with 13(1)(c)&(d) of the Prevention of Corruption Act, 1988 and the substantive offences punishable under Sections 419, 420, 467, 468, 471 and 477-A IPC and Section 13(2) read with 13(1) (c) and (d) of the Prevention of Corruption Act, 1988. In order to prove the charges, the prosecution side examined the witnesses P.W.1 to P.W.38 and marked Ex.P.1 to Ex.P.318. On the side of the accused D1 to D7 were marked. After the trial, the accused were found guilty and they were convicted and sentenced as stated above. Against which, the present appeals have been filed.

5. The learned Counsel appearing for the petitioner/Appellant in Crl.A.52 of 2021 would submit that the petitioner/ Appellant/ V.R.Radhakrishnan is arrayed as A1. He was the Manager of the Bank

during the relevant period. He had in fact taken action against A3 for non repayment of loans and the properties given as security were attached under SARFAESI proceedings and antagonized by the same, A3 has preferred a false complaint against the petitioner. Based on which, CBI has taken up the case for investigation. He would submit that other than safeguarding the interest of the bank, the petitioner had not done anything. Whereas, the CBI had found fault with the petitioner/Appellant and filed final report against him and only after the registration of the case, the petitioner was placed under suspension. Other than that, the bank did not take any action against the petitioner/Appellant and the fact remains that no loss has been suffered by the Bank. Even as per the judgment of the trial Court, the entire amount has been repaid by A3 to the Bank. He would submit that the incident is alleged to have happened during the period 2003 to 2006 and subsequently, departmental action was taken against the petitioner/Appellant and that two of his increments were also cut. He would submit that the petitioner is aged 60 years and he has been suffering from various ailments.

6. The learned counsel appearing for the petitioner/Appellant in Crl.A.56 pf 2021 would submit that the petitioner/Appellant/A4 is the customer in the bank and that the cheque belongs to the petitioner has been misused by A1 and A2 for their fraudulent Act and that without the knowledge of the petitioner, a false credit of Rs.7.50 lakhs has been made to his account and immediately without his knowledge, the said amount has been transferred to the account of A3 to settle his debts. He would submit that P.W.33 has spoken about the said transaction. He would further submit that the petitioner was not aware of the fact of crediting the amount of Rs.7.50 lakhs in his account and the debit made on the next day itself. However, on the wrong presumption, the lower Court has held that the petitioner was also party in the conspiracy between A1, A2 and A3. He would further submit that the petitioner is aged about 70 years and he is suffering from serious heart ailments and has enclosed necessary medical certificates to that effect.

7. The learned Counsel appearing for the petitioner/Appellant in Crl.A.No.58 of 2021 would submit that the petitioner is arrayed as A3 before the trial Court. The allegation against the petitioner/Appellant is that he conspired with the Branch Manager and the Forex Manager and indulged in the manipulation of documents and caused loss to the bank. The fact remains that the petitioner is the victim for the mistakes committed by A1 and A2 and that the petitioner has been unnecessarily roped in this case. Other than being a whistle blower, the petitioner has not done any manipulation. Even as per the evidence, A1 and A2 are the main persons who had indulged in circular transfers of amounts in the Bank and gained profit. He would further submit that finding of the trial Court is that the bank did not suffer any loss. He would further submit that the petitioner is diagnosed with 99 % Proximal stenosis and that he has been fixed with stent in the heart.

8. The learned Counsels for the petitioners/appellants would submit that the fine amount has already been deposited before the trial Court and the trial Court has also suspended the sentences

till 18.02.2021. The learned counsels would further submit that there are several arguable points and that the petitioners/Appellants are advised that they have got a good case for acquittal and would pray that the substantive sentence imposed against the petitioners/appellants may be suspended.

9. The learned Special Public Prosecutor for CBI Cases has raised objections for suspending the sentences stating that the petitioners had entered into conspiracy and by fabrication of documents and falsification of accounts have indulged in circular transfers and indulged in temporary misappropriation of accounts. He would fairly concede that as per judgment of the trial Court, the bank has not suffered any loss.

10.Taking into consideration the submissions made by the learned counsels for the petitioners/Appellants and also taking into consideration of the fact that the trial court has also suspended the sentences till 18.02.2021, the substantive sentence of imprisonment alone is suspended.

11. Hence, the sentence of imprisonment imposed on the petitioners/Appellants by the trial Court alone is hereby suspended till the disposal of the appeal and the petitioners/appellants are ordered to be enlarged on bail on their executing a separate bond for Rs.25,000/- [Rupees Twenty five thousand only] with two sureties each for a like sum to the satisfaction of the learned II Additional District Judge (CBI Cases), Coimbatore, and on further condition that the petitioners/appellants shall report before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

-sd/-
15/02/2021

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 II ADDITIONAL DISTRICT JUDGE
(CBI CASES), COIMBATORE.

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

3 INSPECTOR OF POLICE, SPE / CBI / ACB/
CHENNAI.

C.C. to M/S. SUNDER MOHAN Advocate on payment of necessary charges SR.NO.1654

C.C. to M/S. S.VENKATESH Advocate on payment of necessary charges SR.NO.1637

C.C. to M/S. A.RAMKUMAR Advocate on payment of necessary charges SR.NO.1647

Order

in

CRL MP.Nos.1176,1272 & 1360 of 2021

in CRL.A.52,56 & 58 OF 2021

Date :15/02/2021

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

RVR 17/02/2021