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 No.1530 of 2021

in CRL.A.No.63 OF 2021

BALAKRISHNAN [APPELLANT/SOLE ACCUSED]

Vs

STATE BY [ RESPONDENT ]
THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SALEM.
CR.NO.4/AC/2011

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.63 OF 2021 on the file of the High Court, the High Court will be pleased to order Suspension of Sentence of the Judgment dated 30.12.2020 made in Special Calender Case No.98/2014 (Old No.Spl.CC No.1/2013 on the file of then Special Judge Cum CJM Salem) passed by the Special Judge (Special Court for trial of Cases under the prevention of corruption Act) Salem pending disposal of the Crl.A.No.63 of 2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.63 of 2021 on the file of the High Court and upon hearing the arguments of M/S. C.SIVANESAN, Advocate for the petitioner and of MR. T.SHANMUGA RAJESWARAN Government Advocate(Crl.Side) on behalf of the Respondent the court made the following order:-

The Criminal Miscellaneous Petition has been filed by the Appellant/Accused, praying to order the suspension of sentence of the Judgment dated 31.12.2020, made in Special Calendar Case No.98 of 2014, (Old Spl.C.C.No.1 of 2013 on the file of the then Special Judge cum Chief Judicial Magistrate, Salem), passed by the learned Special Judge (Special Court for trial of cases under the Prevention of Corruption Act) Salem, pending on the file of the Criminal Appeal.

2.The Appellant/Accused was found guilty of the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and he has been convicted and sentenced as under:

| S.No. | Conviction | Sentence |
|---|---|---|
| 1. | Under Section 7 of the Prevention of Corruption Act, 1988 | One Year Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo Three Months Simple Imprisonment. |

| S.No. | Conviction | Sentence |
|---|---|---|
| 2. | Under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 | Two Years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo Six Months Simple Imprisonment. |

3.The sentences were ordered to run concurrently. Aggrieved against the same, the Appellant/Accused has preferred this Criminal Appeal. Pending in Criminal Appeal, the Petitioner/Accused has filed the present Criminal Miscellaneous Petition, seeking for suspension of sentence.

4.The case of the prosecution is that the Appellant/Accused was working as a unskilled permanent worker in Ammapet Zonal Office, Salem Corporation, Salem, during the period from 23.02.2006 to 15.03.2011, and he was nominated for assisting tax collection duties in Ward No.44, Ammapet Zone, Salem Corporation. The further allegation is that P.W.2/de facto complainant viz., T.Pratheepan, had purchased a property from one V.Saravanan and that he had applied for transferring the ownership records in his name on 09.03.2011, at the Ammapet Zonal Office, Salem. The application was received and the endorsement was also made by the Record Clerk viz., S.Vanithamani, on the same day (i.e., 09.03.2011) and that on 11.03.2011, at about 11.30 hours, when the de facto complainant was working in his shop, the Appellant/Accused had come for inspection and demanded a sum of Rs.7,000/- as illegal gratification other than legal remuneration for name transfer of the said property and thereafter, the demand was reduced to Rs.6,000/-. The de facto complainant, then went to give a prior complaint before the respondent on 15.03.2011, pursuant to which, a trap was laid on the same day (i.e., 15.03.2011) and the Appellant/Accused was caught red handed while receiving the bribe amount. Thereafter, based on the complaint of the defacto complainant, the case was registered by the respondent police and after completion of investigation, final report was filed against the Appellant/Accused for the offence under Sections 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

5.The learned counsel for the Appellant/Accused would submit that the the Petitioner/Accused is an innocent and he was only working as an unskilled permanent worker in Ammapet Zonal Office, Salem Corporation, Salem and that he was not the person authorized or having powers to do name transfer in respect of properties, whereas, the petitioner was made as a scapegoat. He would submit that the Trial Court erred in convicting the Appellant/Accused when the prosecution has not proved the case beyond all reasonable doubts. He would submit that there are arguable points available in the appeal and that the Appellant/Accused is advised that he has got a fair chance of succeeding in the appeal. He would further submit that the Trial Court has suspended the sentence till 12.02.2021 and would submit that the fine amount has already been paid and would pray that the substantive sentence of imprisonment imposed against the Appellant/Accused may be suspended.

6.The learned Government Advocate (Crl.Side) would submit that the Appellant/Accused was arrested red handedly while receiving the bribe amount from the defacto complainant. He would submit that the prosecution has proved his case beyond all reasonable doubts and that on the side of the prosecution, they have examined 15 witnesses as P.Ws.1 to P.W.15 and marked 28 documents as Exs.P1 to Ex.P28 and 5 material objects were marked as M.Os.1 to M.O.5 . Hence, he opposed for the grant of bail to the Appellant/Accused.

7.Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the substantive sentence of imprisonment alone is suspended and the Appellant/Accused is ordered to be enlarged on bail, on the following conditions:-

(i)The Appellant/Accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with two sureties, each for a like sum to the satisfaction of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem.

(ii)The Appellant/Accused 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 THE SPECIAL COURT FOR
PREVENTION OF CORRUPTION ACT CASES, SALEM.



2 THE CHIEF JUDICIAL MAGISTRATE
SALEM(FOR INFORMATION)

3 THE SPECIAL JUDGE CUM CHIEF
JUDICIAL MAGISTRATE, SALEM

4 THE SPECIAL JUDGE(SPECIAL
COURT FOR TRIAL OF CASES UNDER THE
PREVENTION OF CORRUPTION ACT)SALEM.

5   THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6  THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SALEM.

C.C. to M/S. C.SIVANESAN  Advocate on payment of necessary charges Sr.1537

Order

in
CRL MP.1530/2021

in CRL.A.No.63 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