IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.MP.No.14649 & 14651 of 2022
in
Crl.A.No.1091 of 2022

Ranjiv Batra (Male – 66 years) S/o.Late OP.Batra Managing Director of A1 & A2 Company, No.4 & 5, Sydenhams Road, Arunachalam Lane, Periamet, Chennai 600003. Permanent address: No.A2/21, Model Town, New Delhi.	... Petitioner in Crl.MP.14649 of 2022
Kiran Batra (Female – 61 years) W/o.Ranjiv Batra Director of A1 & A2 Company, No.4 & 5, Sydenhams Road, Arunachalam Lane, Periamet, Chennai 600003. Permanent address: No.A2/21, Model Town, New Delhi.	... Petitioner in Crl.MP.14651 of 2022

Vs.

The Central Bureau of Investigation,
Rep. by the Investigating Officer,
Economic Offence Wing,

Rajaji Bhavan, Besant nagar,
Chenani 600 090
[RC.No.4E/98/CBI/EOW/CNI] ... Respondent in both Petitions

PRAYER: These Criminal Original Petitions are filed under Section 389 (1) of Cr.P.C., to suspend the sentence of imprisonment passed by the Court of Principal Special Judge and VIII Additional City Civil Court, Chennai in C.C.No.15 of 2001 dated 16.09.2022 and direct the release of the Petitioners/Appellants/Accused Nos.3 & 4 on bail with reasonable conditions, pending disposal of the appeal.

For Petitioner : Mr.T.Sivananthan (in both Petitions)

For Respondents : Mr.K.Srinivasan (in both Petitions)
Special Public Prosecutor for CBI Cases

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed by the Petitioners/Accused Nos.3 & 4, seeking suspension of sentence of imprisonment passed by the learned Principal Special Judge, VIII Additional City Civil Court, Chennai in C.C.No.15 of 2001 dated 16.09.2022 and enlarge the Petitioners/Appellants on bail, pending disposal of the above Criminal Appeal.

2.The Petitioners/Appellants are the accused Nos.3 & 4 in C.C.No.15 of 2001 before the learned Principal Special Judge, VIII Additional City Civil Court, Chennai. They were convicted and sentenced as under:

S.No	***Charges***	***A3/Ranjiv Batra***	***A4/Kiran Batra***
1	Charge No.1 120b r/w 420, 409, 467, 468, 471 r/w 468 IPC & 13(2) r/w 13(1)(d) of PC Act 1988 & 135 of Customs Act	37 months RI and fine of Rs.10,000/- i/d 9 months SI	37 months RI and fine of Rs.10,000/- i/d 9 months SI
2	Charge No.4 420 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	Nil
3	Charge No.7 420 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	37 months RI and fine of Rs.10,000/- i/d 9 months SI
4	Charge No.12 420 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	Nil
5	Charge No.17 420 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	Nil
6	Charge No.20 132 and 135 of Customs Act 1962	24 months RI and fine of Rs.10,000/- i/d 9 months SI	24 months RI and fine of Rs.10,000/- i/d 9 months SI
7	Charge No.27 471 r/w 468 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	37 months RI and fine of Rs.10,000/- i/d 9 months SI
8	Charge No.28 420 IPC	37 months RI and fine of Rs.10,000/-	37 months RI and fine of Rs.10,000/-

S.No	Charges	A3/Ranjiv Batra	A4/Kiran Batra
		i/d 9 months SI	i/d 9 months SI
9	Charge No.29 467 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	37 months RI and fine of Rs.10,000/- i/d 9 months SI
10	Charge No.30 468 IPC	37 months RI and fine of Rs.10,000/- i/d 9 months SI	37 months RI and fine of Rs.10,000/- i/d 9 months SI

3.Challenging the above conviction and sentence, the Petitioners/ Accused Nos.3 & 4 have filed the Appeal along with these instant Miscellaneous Petitions seeking suspension of sentence and enlarge them on bail.

4.The case against the Petitioners is that the Petitioners who are the Directors of A1 & A2 company had obtained credit facilities from Indian bank, Thousand Light Branch to the tune of Rs.39.18 crores. The other Accused viz., then Chief Managers, then Senior Managers, then Zonal Manager, then General Magaer, then Chairman & Managing Director of Indian Bank were conspired with them and extended credit facilities to the Petitioners. The said amount has been misappropriated and cheated. Further, for availing credit facilities, they produced false documents showing their credit worthiness, turn over, export bills and other documents.

5.Before the trial Court, on the side of the prosecution 61 witnesses were examined as P.W.1 to P.W.61 and 785 documents were marked as Ex.P.1 to Ex.P.785 and on the side of the accused no one examined and 28 documents were marked as Ex.D1 to Ex.D28.

6.On perusal of evidences and available materials on record, the trial Court convicted the Petitioners as stated above.

7.The contention of the Petitioners is that though on the side of the Petitioners oral argument was advanced, written submission referring to various Exhibits and documents running to 33 pages have been filed, the same had not been considered by the trial Court. The trial Court merely on the chief examination and on wrong appreciation of exhibits convicted the Petitioners and failed to look into the facts that it is a business transaction, wherein for the reasons beyond the control of the Petitioner, the company at Moscow, which had failed to fulfil their obligations and failed to make payment for exported products, had lead the Petitioners' company in the quandary and the lending bank has charged exorbitant rate of 43% which is abnormal.

8.He further submitted that the company Kiran Overseas Limited was incorporated in the year 1993 in Luthiana, but the conspiracy is said to be taken place during 1988 and 1995 and on 19.05.1988, A1 company was not even formed and it was only a proprietorship concern of A4. The trial Court giving reason that the charges have been proved beyond reasonable doubt is not based on any evidence. Further the trial Court had given a finding that the Petitioners have taken loan credit facility from the Indian Bank, Thousand Light Branch and thereafter, induced the Indian Bank officials to deliver Pay Order to BOBL to takeover of the account and thereby committed the offence punishable under Section 420 IPC is not proper. Further the trial Court finding that the inadequate securities to avail credit facility for A1 & A2 is not proper. The trial Court's further finding that there has been diversion of fund and purchase of immovable properties by the accused, instead of using the same for business development is also not based on any evidence and materials, which is only a notional finding. Likewise, availing of Temporary

Over Draft (TOD) facility, without any sanction from the competent authority and allowing the same to adjust the packing credit facility is also not wrong. Further in banking practice, Temporary Over Draft (TOD) facility can be transferred to current account and payable charges, interest can be debited in the same.

9.He further submitted that the trial Court failed to consider that the entire credit sanction given to all the companies of Kiran Group based on the Group securities and it is *Pari Passu* charge with other 14 Banks in the Bank consortium. Hence debiting of 50 lacks to another Kiran Group Company viz., Kiran Overseas Export Limited is as per the Ground Accounts Credit sanction, which was considered by Board of Directors of Indian Bank.

10.He further submitted that within the Group Companies, the inter transactions are permissible for business growth and exigencies as per Section 37 of Income Tax Act, which the trial Court failed to consider. Further, A4 was Managing Director of A1 company and A3 was his wife and not taking any direct participation in the affairs of A1 company. The export bills were not properly presented to the bank officials on time and Petitioners/Appellants requested permission of RBI to extend the time to get receipt of outstanding export bills. The Indian Bank officials has not recommended to RBI to get extension, for which, the Petitioners cannot be penalised. Further, one of the charge is under Customs Act and the trial Court had no jurisdiction to convict the Petitioners under the Customs Act. The trial Court failed to consider the judgment of this Court passed in Crl.R.C.Nos.1426 & 1427 of 2005 dated 28.07.2021.

11.He further submitted that the primary ground on which the trial Court proceeds is that the export obligation not completed and the proceeds of export have not been credited to the bank account. In this case, the export obligation not fulfilled by the importer, which is beyond the control of the Petitioners. The Customs Officer for that reason, not taken any action against the Petitioners. On the other hand, the trial Court have given a finding that it is a cheating and misappropriation, using forged documents.

12.He further submitted that the Petitioner had already filed

W.P.No.167769 of 2022 seeking issuance of direction to the Join Secretary (Banking), Department of Financial Services, Ministry of Finance and Indian bank and ARCIL, Mumbai to disclose the recoveries made and adjusted towards accounts of Kiran Overseas Limited. According to the Petitioner properties worth Rs.34 crores have been sold but particulars with regard to how it has been apportioned to each of the bank account has not been disclosed. He further submitted that it is a business transaction, which failed for the reasons beyond the control of the Petitioners, for which, the trial Court treated the case as if the case of cheating and misappropriation. He further submitted that before the trial Court at the time of 313 questioning for the absence of Petitioners NBW was issued and they were in prison for 30 days and after conviction they are again confined in Prison.

13.Mr.K.Srinivasan, learned Special Public Prosecutor for CBI cases appearing for the Respondent filed counter affidavit, in which it has been stated that Ranjiv Batra (A-3) and his wife Smt. Kiran Batra (A-4), the present petitioners, who represent M/s. Kiran Overseas Limited, Chennai (A-1) and M/s. Kiran Overseas Limited, New Delhi (A-2), were convicted for offences under section 120-B r/w. 420, 409, 467, 468, 471 r/w. 468 IPC, 13(2) r/w. 13(1)(d) of PC Act and section 132, 135 of Customs Act, substantive offences u/s. 420 IPC (5 counts), Section 132, 135 of Customs Act, section 471 r/w. 468 IPC, 467 IPC and 468 IPC and were sentenced to undergo 37 months Rigorous imprisonment each, for each of the offences. There are ten counts/charges on which the sentence of 37 months Rigorous has been imposed on the Petitioners/accused Ranjiv Batra (A-3) and Kiran Batra (A-4). But for the specific mention in the judgement that the sentences would run concurrently, the total sentences is to the tune of 37 months.

14.He further submitted that the fine imposed on them by the Trial Court in judgement dated 16.09.2022 has been paid by the Petitioners/Accused Ranjiv Batra (A-3) and Kiran Batra (A-4) as well as on behalf of M/s. Kiran Overseas Limited, Chennai (A-1) and M/s. Kiran Overseas Limited, New Delhi (A-2) whom they represent. Both the Petitioners/Convicts Ranjiv Batra (A-3) and Kiran Batra (A-4) were lodged in the Central Prison, Puzhal on 16.09.2022.

15.He further submitted that during the trial of the case in the year 2019, when the case was posted to 26.11.2019, for questioning of the accused under Section 313 Cr.P.C., both the Petitioners/accused Ranjiv Batra (A-3) and Kiran Batra (A-4) failed to appear in person before the trial Court and accordingly Non Bailable Warrant of Arrest was issued against them by the trial Court. While attempting to execute these NBWs, it was found that both the accused were not residing in the address declared by them. While the prosecution was ascertaining the present whereabouts of the accused through enquiry, both the accused sought recall of the NBW, which was allowed by the trial Court by order dated 17.12.2019.

16.He further submitted that the defrauded amount has not been repaid by or recovered from the Petitioner/Accused till date and the wrongful loss of Rs.39.18 crores suffered by Indian Bank in this case has not been mitigated.

17.Considering the above facts and circumstances of the case 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 for final hearing, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the Appeal.

18.Accordingly, the Substantive Sentence of Imprisonment imposed on the Petitioners is suspended till the disposal of the Appeal and the Petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like sum to the satisfaction of the learned Principal Special Judge, VIII Additional City Civil Court, Chennai.

19.Further, the Petitioners are directed to appear before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

28.09.2022
(2/2)

Internet : Yes/No
Index : Yes/No
Speaking order/Non-speaking order

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Note: Issue order copy on 29.09.2022.

To

1.The learned Principal Special Judge for CBI Cases

VIII Additional City Civil Court, Chennai.

2.The Superintendent of Prison,
Central Prison for Women,
Puzhal.

3.The Superintendent of Prison,
Central Prison No.I,
Puzhal.

4.The Public Prosecutor,
High Court,
Madras.

M.NIRMAL KUMAR, J.

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