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Crl.MP.No.15342 of 2022 in Crl.A.No.1105 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.MP.No.15342 of 2022

in

Crl.A.No.1105 of 2022

S.Arunachalam (A11)
Hindu Aged about 77 years,
S/o.Late R.Subramaniam,
B1, 9, 7th Main Road,
Vijayanagar, Velachery,
Madras 600 042.

... Petitioner

Vs.

State Rep. by Inspector of Police,
The Central Bureau of Investigation,
Represented by the Investigating Officer,
Economics Offences Wing, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.
RC.No.4E/98/CBI/EOW/CNI

... Respondent

PRAYER: This Petition is filed under Section 389 (1) of Cr.P.C., to suspend the sentence of imprisonment imposed against the Petitioner/Appellant by the Principal Special Judge for CBI Cases (VIII Additional City Civil Court) in and by judgment dated 16th September 2022 and enlarge the Petitioner on bail, pending disposal of the above Appeal.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases



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ORDER

This Criminal Miscellaneous Petition has been filed by the Petitioner/Accused No.11, seeking suspension the sentence of imprisonment imposed against him, by the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai in C.C.No.15 of 2001 by judgment dated 16th September 2022 and enlarge him on bail, pending disposal of the above Appeal.

2.The Petitioner/Appellant is the accused No.11 in C.C.No.15 of 2001 before the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai. He was convicted and sentenced as under:

S.No	Charges	A11/S.Arunachalam
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	3 years RI and fine of Rs.10,000/- i/d 9 months SI
2	Charge No.13 409 IPC	3 years RI and fine of Rs.10,000/- i/d 9 months SI
3	Charge No.14 13(2) r/w 13(1)(d) of PC Act	3 years RI and fine of Rs.10,000/- i/d 9 months SI
4	Charge No.15 409 IPC	3 years RI and fine of Rs.10,000/- i/d 9 months SI
5	Charge No.16 13(2) r/w 13(1)(d) of PC Act	3 years RI and fine of Rs.10,000/- i/d 9 months SI
6	Charge No.23	3 years RI and fine of Rs.10,000/- i/d



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S.No	Charges	A11/S.Arunachalam
	409 IPC	9 months SI
7	Charge No.24 13(2) r/w 13(1)(d) of PC Act	3 years RI and fine of Rs.10,000/- i/d 9 months SI
8	Charge No.25 409 IPC	3 years RI and fine of Rs.10,000/- i/d 9 months SI
9	Charge No.26 13(2) r/w 13(1)(d) of PC Act	3 years RI and fine of Rs.10,000/- i/d 9 months SI

3.Challenging the above conviction and sentence, the Petitioner/ Accused No.11 filed the Appeal along with the instant Miscellaneous Petition, seeking suspension of sentence and enlarge him on bail.

4.The case against the Petitioner is that the Petitioner is the then General Manger of Indian bank, Chennai. 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 Chairman & Managing Director of Indian Bank along with A11 were conspired with them and extended credit facilities to A3 & A4. The said loan amount has been misappropriated and cheated. Further, for availing credit facilities, A3 & A4 produced false documents showing their credit worthiness, turn over, export bills and other documents. The primary allegation against the Petitioner is that he is being the then General



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Manager of Indian Bank granted loan to A1 to A4 for the purpose of settling another loan availed by them with Bharath Overseas Bank.

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

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

7.The learned counsel for the Petitioner submitted that there are some vital facts available in the evidence which would disprove the case of the prosecution, which had been completely overlooked by the learned Special Judge, while arriving at the finding. The learned trial Judge also failed to appreciate the evidence of PW32, who had clearly stated in the cross examination that no lapses were found against the Appellant and as per the Central Vigilance Commission Act, the Bank has to write to CVC for Officers in Scale III and should seek approval for prosecuting the officials and no sanction was obtained from CVC, as for the Petitioner is concerned. There is no



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material to conclude that the official and borrowers conspired together and committed the offences. The pari passu charge indicated in the charge could not in any way dilute or jeopardise the securities of Indian Bank.

8.The learned counsel for the Petitioner further submitted that the Petitioner is 77 years old man and is suffering from age related health issues

9.Mr.K.Srinivasan, learned Special Public Prosecutor for CBI cases appearing for the Respondent submitted that Petitioner, who is the then General Manager of Indian bank, Chennai was convicted for offences under section 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 and was sentenced to undergo 3 years Rigorous imprisonment each, for each of the offences. There are nine counts/charges on which the sentence of 3 years Rigorous imprisonment has been imposed on the Petitioner. But for the specific mention in the judgement that the sentences would run concurrently, the total sentences is to the tune of 3 years.

10.He further submitted that the fine imposed on the Petitioner by the Trial Court in judgement dated 16.09.2022 has been paid by the Petitioner.

11.Considering the above facts and circumstances of the case and also



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taking note of the fact that there are arguable points involved in the 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.

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) each with two sureties, each for a like sum to the satisfaction of the learned Principal Special Judge, VIII Additional City Civil Court, Chennai.

13. Further, the Petitioner is directed to appear before the trial Court once in six months, on the first working day of English Calendar month at 10.30 a.m., until further orders.

10.10.2022
(2/2)

Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order

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To

1.The learned Principal Special Judge for CBI Cases
VIII Additional City Civil Court, Chennai.

2.The Public Prosecutor,
High Court,
Madras.



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M.NIRMAL KUMAR, J.

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