

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.833 OF 2016
IN
CRIMINAL APPEAL NO.467 OF 2016**

Mr.Nimesh Rameshchandra Shah & Anr. ... **Applicants**
V/s.
Central Bureau of Investigation & Anr. ... **Respondents**
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Mr.Girish S. Kulkarni i/b. Mr.M.G.Shukla, Advocate for the Applicants.
Mr.H.S.Venegaonkar, Advocate for the Respondent No.1/CBI.
Mr. S. V. Gavand, APP for the Respondent/State.
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CORAM : P. N. DESHMUKH J.

DATED : 23rd AUGUST 2016.

P.C.

1 This is an application for suspension of sentence and for grant of bail by original accused Nos.2 and 3 respectively who came to be convicted by the learned Special Judge and Additional Sessions Judge, Greater Mumbai in CBI Special Case No.78 of 2000. Learned counsel for the applicant contended that applicants are convicted for the offence punishable under Sections 420 read with 120(B) of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for three years each and are further convicted for the offence punishable under Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 and are sentenced to suffer rigorous imprisonment for three years each. It is thus contended that since short

sentence is imposed upon applicants, and as there is no fine imposed, there is no question of applicants depositing the same and thus seeks suspension of sentence and bail.

2 Learned Additional Public Prosecutor appearing for CBI has opposed for grant of bail, without any directions to applicant to deposit the amount as directed to be paid by the applicants to the extent of Rs.25,00,000/- each as compensation. Learned Additional Public Prosecutor has submitted that though, sentence imposed, as aforesaid, can be suspended, application should not be allowed, unless applicants are directed to make payment of amount of compensation, or part of same before the trial Court.

3 Perused the impugned Judgment. Both the applicants are found convicted, as aforesaid, and are acquitted of the offence punishable under Sections 467, 468 and 471 of the Indian Penal Code read with Section 120(B) of the Indian Penal Code. Considering the punishment imposed upon applicants, since is up to three years can termed to be as short sentence. Moreover, pending trial applicants are stated to be on bail and admittedly it is no case of respondents that they have jumped any of the bail conditions imposed upon them pending trial. Paragraph 3 of the operative part of order in the judgment reveals that no fine is imposed by the learned Special Judge, however amount of Rs.25,00,000/- each is directed to be paid by the applicants towards compensation under Section 357(3) of the Code of Criminal Procedure.

4 In that view of the matter, and as *prima facie* it appears that no fine amount is imposed, application is liable to be allowed by suspending sentence imposed upon the applicants and by granting relief of bail as per the order below :

- (i) Substantive sentence of imprisonment imposed upon applicants, as aforesaid, stand suspended.
- (ii) Applicants/original accused Nos.2 and 3 shall be released on bail on their executing personal bond in the sum of Rs.25,000/- each with one surety each in the like amount.
- (iii) Applicants shall not leave jurisdiction of this Court without obtaining permission pending trial.
- (iv) Needless to say that there is no stay to recovery of compensation as awarded by the learned Special Court and same can be recovered by the authorities concerned according to the Maharashtra Land Revenue Code.

(P. N. DESHMUKH J.)