

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

**CRIMINAL APPLICATION NO.985 OF 2016
IN
CRIMINAL APPEAL NO.539 OF 2016**

Raosaheb Shripati Shelar ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.P.R.Arjunwadkar with Mr.Omkar Nagvekar, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 22nd AUGUST 2016.

P.C.

1 This is an application for suspension of sentence and for grant of bail by accused who is convicted by the learned Additional Sessions Judge, Barshi, District Solapur for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act sentencing to suffer simple imprisonment for a period of four years and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for three months.

2 Learned counsel for the applicant, at the outset, submitted that according to the case of prosecution incident of alleged bribe of Rs.7,000/- demanded and accepted by the applicant, is dated 06/09/2013, and, therefore, the learned trial Judge should have considered the provisions, which were then in existence according to

which minimum sentence was for one year, which may extend up to seven years. The amended provisions to the Prevention of Corruption Act, 1988 came into force on 16/01/2014, vide of which minimum punishment for the offence punishable under Section 13(1)(d) is of four years and same may extend to ten years and shall also liable to fine.

3 In the background of above, it is, therefore, submitted that the learned Sessions Judge has imposed sentence of four years which is as per amended provisions, which, in fact, was not in force as the incident involved is dated 06/09/2013. It is further contended that even otherwise from the evidence on record prosecution could not establish that the work of division of agricultural lands are within the jurisdiction of the applicant-Talathi. It is also contended that even no proceedings of complaint of any kind were pending with accused, and as such he is falsely implicated. It is, therefore, contended that applicant be allowed to be released on bail on suspending substantive sentence imposed.

4 Learned Additional Public Prosecutor opposed the application on the ground that there is direct evidence.

5 With reference to punishment of four years imposed upon the applicant, as aforesaid, I find substance in the submission of applicant as the incident involved in the case is dated 06/09/2013 while the amended provision came into force with effect from 16/01/2014 vide which minimum term of imprisonment for offence

punishable under Section 13(1)(d) of the Indian Penal Code is of four years which may extend to ten years and shall also be liable to fine.

6 In that view of the matter, *prima facie* it appears that learned Additional Sessions Judge had imposed minimum punishment of four years, as aforesaid, considering the amended provisions without considering the fact that the incident involved in the case is dated 06/09/2013.

Even otherwise from the evidence of father of complainant, owner of the land has admitted that the work of division of lands was with Tahsildar. Admittedly, applicant was not a Tahsildar, at the material time, but was working as Talathi.

Evidence of P.W.No.4, Sanctioning Authority on this aspect further reveals that work of measurement of land is not to be carried out by Talathi. Said Authority has further admitted that no work of complainant was pending with applicant.

Similar is the evidence of Investigating Officer, when he has admitted that work of division of agricultural land is of Tahsildar and necessary application is to be made to the Tahsildar. He has further admitted that during the course of investigation no such application was found made by complainant to Tahsildar.

7 Considering the facts, as aforesaid, and as it is found that applicant is imposed with short sentence of four years, as aforesaid, and as applicant was on bail pending trial, and it is not the case of prosecution that applicant while on bail had misused the liberty granted to him, application is liable to be allowed as per order below :

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon applicant stands suspended.
- (iii) Applicant is directed to be released on bail on his executing personal bond in the sum of Rs.25,000/- with one or two sureties to make the like amount.
- (iv) Applicant shall mark his presence with Karmala Police Station once in three months on first day of such month pending appeal.

(P. N. DESHMUKH J.)