

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.1248 OF 2017

IN

CRIMINAL APPEAL NO.103/2017.

Smt. Shobha Sonba Raut,
age 47 years, occu. Service as
Sub-Divisional Officer and
Land Acquisition Officer,
Osmanabad,
r/o Ganpati Chowk,
Near Deshmukh Hotel, Vasmat Road,
Parbhani, Tq. & Dist. Parbhani.

..APPLICANT.

VERSUS

The State of Maharashtra.

..RESPONDENT.

...

Advocate for Applicant : Mr.Bhosale Sanjaykumar B.
APP for Respondents/State: Mr.K.S. Patil.

...

CORAM : V.L. ACHLIYA, J.

Dated: APRIL 04, 2017.

PER COURT:

1. The applicant has moved this application seeking suspension of sentence and release on bail during pendency of appeal.

2. Heard learned Counsel for applicant and APP for the State and further perused impugned judgment and order passed by the trial Court as well as copies of depositions.

3. Applicant – accused, who was serving as Sub Divisional Officer, was charge-sheeted for committing offence under section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 with an allegation that she has demanded bribe amount to the extent of 5% of the compensation to be payable to the farmers, for releasing the amount in their favour. Pursuant to the complaint lodged by the complainant Dattatraya, trap was laid. The trap was successful. Bribe amount of Rs.39,200/- accepted by her from complainant was found in her purse. Anthracene powder was also detected on her hands. The conversation between the complainant, accused and other persons in the chamber of the accused was recorded.

4. In order to prove its case, prosecution has examined the complainant, panch witnesses, Investigating Officer and other witnesses. On conclusion of trial, learned Special Judge has found the applicant guilty of offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.25,000/-, in default, to suffer rigorous imprisonment for six months. For committing offence punishable under Section 13(1)(d) and section 13(2) of the Prevention of Corruption Act, 1988, the applicant – accused has been sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.25,000/-, in default, to suffer rigorous imprisonment for six months. Both the sentences ordered to run concurrently. Being aggrieved, the applicant has preferred appeal and pending disposal of appeal claimed to be released on bail by suspending sentence.

5. The learned Counsel for the applicant strenuously contended that applicant has been falsely implicated in the case at the behest of Rambhau Jadhav, who was working on contract basis in the Tahsil Office. According to learned Counsel, services of said person were terminated at the behest of applicant – accused as she received complaints that said person was demanding money from people to get the work done in their favour. Learned Counsel submits that there is no cogent, convincing and reliable evidence to sustain the conviction. By referring evidence of Investigating Officer, he submits that the Investigating Officer has admitted that there was another purse, which was found in the drawer of the accused, claimed to be belonging to her. The purse, which was seized during trap, containing bribe money was deliberately placed on the table of accused. He submits that on examination of purse from inside in ultraviolet rays, no traces of Anthracene powder were detected. He, therefore, submits that possibility of the applicant –

accused being falsely implicated in the case, cannot be ruled out in the light of evidence on record. The learned Counsel for applicant further submits that bribe amount was found to be lying in the hands of one of the farmers, when the raiding party entered into the chamber of applicant – accused.

6. On the other hand, learned APP has opposed the application with contention that there is strong evidence to establish complicity of the accused in commission of offences for which the trial Court has held the applicant – accused guilty. He submits that looking to the nature of offence and sentence awarded, applicant – accused may not be enlarged on bail.

7. In order to appreciate the submissions advanced, I have thoroughly perused record and proceedings, and further considered the evidence adduced by the prosecution to prove guilt against applicant. While dealing with such application, it is not desirable to

make detailed comments as to merits of case. I, therefore, refrain myself from making detailed observations in respect of merits of the case. On consideration of evidence, I am of the view that there is sufficient evidence to connect applicant – accused with the offences for which she has been held guilty by the trial Court. Besides the complainant, prosecution has examined the panch witness Dr.Chanchala Bodake, Class-I Officer working with Civil Hospital, Osmanabad as Radiologist possessing qualification as M.B.B.S., M.D., Dy.S.P. Ashwini Bhosale the Investigating Officer and other witnesses. Besides the oral testimonies of the witnesses, there is recording of conversation between the complainant and accused during verification of complaint as well as at the time of trap. *Prima facie*, there is sufficient evidence to prove the offences for which the applicant has been convicted.

8. The submissions made by the learned Counsel that there was another purse lying in the drawer of

accused, is not sufficient to infer that the purse in which the amount was seized and bribe amount was recovered, was planted by the complainant. There is no such cross-examination about planting of purse of bribe amount. On the contrary, there is evidence to show that beside the bribe amount, amount to the tune of about Rs.30,000/- was found in said purse and in that respect the accused offered explanation that it was part of salary received by her.

9. In the case of **K.C. Sareen vs CBI, Chandigarh**¹ the Apex Court has dealt with the aspect of exercise of powers under section 389 of Cr.P.C. Therein, the Apex Court has observed, as under:

“12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even

1 (2001) 6 SCC 584;

paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even

without the help of a court order suspending the conviction.

13, The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. “

10. It is settled position in law that, to seek suspension of sentence and release on bail is not a substantive right vested in the accused, who has preferred an appeal. It is exercise of a judicial discretion in judicious manner by the Court of appeal. Looking to the overall facts of the case, the nature of evidence and growing instances of corruption in the society and that too, by higher level officials, it is necessary that while dealing with such application, the Court is expected to take a strict view in the matter. I am, therefore, not inclined to entertain the application.

In the facts and circumstances of the case, I am of the view that hearing of the appeal deserves to be expedited.

11. There is marked difference between the procedure for consideration of bail under Section 439 of Cr.P.C., which is pre-conviction stage and section 389 Cr.P.C., which is post-conviction stage. In exercise of powers under Section 389 of Cr.P.C., the appellate Court is not bound to order suspension of execution of sentence or order appealed against, irrespective of the facts of the case, nature of offence, sentence awarded, in each and every case. The exercise of powers under Section 389 of Cr.P.C. is the exercise of judicial discretion in a judicious manner by the Court wherein the appellate Court is called upon to exercise such powers. No one can claim as of right to seek bail when the appeal has been filed and admitted by the appellate Court. While dealing with the application under Section 389 of Cr.P.C., the Court is expected to examine the case on

its own merits and to consider whether it is deemed fit and proper to suspend the sentence and also to consider the consequences if sentence is not suspended. Generally, the discretion is exercised to suspend the sentence by looking to the nature of offence, sentence awarded and time required to hear the appeal finally. Where the Court is of the view that looking to the nature of offence and sentence awarded, it would not be possible to dispose of appeal immediately after its admission, the Court may consider to suspend the execution of sentence and if accused is in jail, may order to release him on bail, pending disposal of appeal. While deciding such application seeking suspension of sentence, the Court has to see that refusal of such relief should not render the very purpose of filing appeal to be frustrated. While suspending the sentence, the Court is under obligation to record reason for exercise of such powers to suspend the sentence. It is, therefore, incumbent upon the appellate Court to find out as to whether

exercise of such powers of suspension of sentence needs to be exercised in the facts and circumstances of the case before it. In case, the Court is of the view that looking to the facts of the case, crime committed, gravity of offence, criminal antecedents of the convict, impact on public confidence in the justice delivery system, the prayer for suspension of execution of sentence may not be entertained, then the Court may adopt to expedite the hearing of appeal instead of suspending the execution of sentence. In this context, it is useful to refer the observations made by the Apex Court in the case of ***Shyam Narain Pandey vs. State of Uttar Pradesh***² wherein, in paragraph 6 the Apex Court has observed, as under:

“6. It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section (389(1) Cr.PC. Couple of provisos were added under Section (389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where

² (2014) 8 SCC 909;

the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity of the institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.”

12. In the present case, the applicant working as a high ranking officer i.e. Sub Divisional Officer, was found to have been caught while accepting the bribe amount of Rs.39,200/- demanded from the farmers for releasing the cheques towards their legitimate claim of compensation. The demand of 5% of the total amount to be received by such group of farmers was made to release the cheques of compensation. The trap was laid

after verification of complaint. During verification of the complaint, the audio of the conversation has been recorded in presence of *panch* witness, who is a Class-I Officer and Radiologist by profession working in Government Hospital. The conversation was also recorded during the process of handing over the bribe amount. The amount was accepted by the applicant in her office. The bribe amount was recovered from the purse. Anthracene powder was recovered on the hands of the accused. On due consideration of the evidence on record, the trial Court has convicted the accused and sentenced to suffer imprisonment for four years for each of the offences and fine of Rs.25,000/- each. Therefore, looking to the nature of offence, crime committed by the applicant, impact on public confidence in the justice delivery system, I am of the view that the request of the applicant to suspend the sentence and release her on bail deserves no consideration. In order to ensure that the purpose of filing of appeal may not be defeated, I am inclined to

expedite hearing of the appeal.

13. In the result, application is rejected. Hearing of the appeal is expedited. Record & proceedings be sent back to the trial Court with a direction to prepare paper-book and send the same to this Court along with record & proceedings within three months. The applicant is granted liberty to move for fixing the appeal for hearing after receipt of record & proceedings with paper-book.

(V.L. ACHLIYA, J.)