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

CRIMINAL APPLICATION NO.715 OF 2017

Ashwani Kumar P. Sharma	... Applicant
Versus	
Central Bureau of Investigation and Anr.	...Respondents

Mr.D.H.Shukla, for the Applicant.

Mr.H.S.Venegaonkar, a/w Mr.T.V.Dhope, for the Respondent No.1-CBI.

Mr.Yogesh Dabke, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th FEBRUARY, 2018

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the Applicant has impugned the order dated 26th April, 2017, passed by the learned Additional Sessions Judge, 48th Court, Greater Mumbai, by which the applicant's discharge application (Exhibit – 16) was rejected for want of prosecution.

3. Learned Counsel for the applicant submits that the learned Judge ought not to have rejected the applicant's discharge application (Exhibit – 16), for want of prosecution, and ought to have heard the same on merits.

4. Be that as it may, learned counsel for the applicant has tendered an affidavit of the applicant, wherein the applicant has undertaken to this Court to diligently pursue his discharge application filed by him in the Sessions Court in Case No.12 of 2013. The said affidavit is taken on record and marked 'X' for identification.

5. Learned Counsel for the Respondent No1- CBI, states that appropriate orders be passed.

6. Perused the papers. The applicant is facing prosecution for the alleged offences punishable under Sections 420, 120B of the Indian Penal Code and under Sections 7 and 8 of the Prevention of Corruption Act. The said offences were registered in September, 2011 and charge-sheet in the said case was filed on 17th December, 2013. The applicant filed an

application (Exhibit – 16) and sought discharge from the said case under Section 227 of Code of Criminal Procedure. The said application was resisted by the CBI by filing a say. It appears that the applicant was absent on 26th April, 2017 but was represented by a Junior Advocate of the Advocate on record. It appears that as the Junior Advocate of the Advocate on record was not ready to proceed with the arguments, the learned Judge was pleased to reject the said application for non-prosecution. It appears that an NBW came to be issued against the applicant and on the very same day i.e. 26th April, 2017, however, the learned Judge was pleased to quash the NBW issued as against the applicant on the application preferred by the applicant's advocate. Thereafter, the applicant preferred 2nd discharge application (Exhibit – 19), on 15th June, 2017, however, the learned Judge rejected the said application on the ground that the said application was not tenable.

7. No infirmity can be found in the said order dated 15th June, 2017 dismissing the 2nd application filed by the applicant seeking his discharge from the case. As rightly noted by the learned Judge, the same was not tenable. As far as the order dated 26th April, 2017, is concerned,

the applicant has tendered his affidavit/undertaking to this Court that he will diligently pursue his discharge application.

8. In view of the affidavit tendered by the applicant, the impugned order dated 26th April, 2017, passed by the learned Additional Sessions Judge, 48th Court, Greater Mumbai, is quashed and set aside. The discharge application (Exhibit – 16) filed by the applicant, is restored back to its original file. The learned Judge shall hear the said discharge application (Exhibit – 16) on its own merits, and pass appropriate orders thereon. A xerox copy of the affidavit tendered in this Court today, shall also be filed before the learned Judge.

9. The Application is allowed and disposed of in above terms.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.