

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1492 OF 2018
IN**

**CRIMINAL APPLICATION NO.1326 OF 2015
IN**

CRIMINAL APPEAL NO.871 OF 2014

Shyamjibhai Govindbhai Patel

@ Satuba J. Zala

... **Applicant**

V/s.

The State of Maharashtra & Anr.

... **Respondents**

.....

Mr.S.V.Marwadi , Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent No.1/State.

Mr.H.S.Venegaonkar, Advocate for the Respondent No.2/CBI.

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CORAM : A.M.BADAR J.

DATED : 4th OCTOBER 2018.

P.C. :

1 This is an application for modification/relaxation of condition of the bail Order dated 10th December 2015 passed by this Court in Criminal Application No.1326 of 2015. Vide said Order, the applicant/appellant was directed to be released on bail on executing P. R. Bond in the sum of Rs.50,000/- and on

furnishing one surety in the like amount. However, this Court had directed that suspension of the sentence shall be on the applicant/appellant depositing the sum of Rs.5,00,000/- in the trial Court and furnishing bank guarantee in the sum of Rs.15,00,000/-. It was further directed that the bail Order shall take effect only after the applicant/appellant depositing a sum of Rs.5,00,000/- in the trial Court and furnishing the bank guarantee in the sum of Rs.15,00,000/-.

2 Heard Shri.Marwadi, the learned Counsel appearing for the applicant/appellant. He argued that the applicant/appellant is 71 years old person having no financial resources. He further argued that in fact, son of the applicant/appellant namely Vinod Shamji Patel appeared before the Court on 28th April 2016 and expressed his as well as his brother's inability to arrange for even a small sum. This development is incorporated in the Order dated 28th April 2016 passed by this Court. With the aid of this Order, Shri.Marwadi, the learned Counsel appearing for the applicant/appellant submits that as of now, the applicant/appellant has undergone substantive sentence of four years and nine months. He has earned remission of 336 days. Thus, in submission of the learned Counsel for the applicant/appellant, the applicant/appellant has undergone the substantive sentence imposed upon him so also default sentence of one year. Therefore, looking to the age of the applicant/appellant,

he needs to be released on bail. It is further argued that except this old person, all other accused persons are already released on bail by this Court and they are enjoying their liberty.

3 Shri.Venegaonkar, the learned Counsel appearing for the respondent/CBI has vehemently opposed the application by contending that the offence alleged and proved against the applicant/appellant was a financial offence and therefore stringent conditions imposed on the applicant/appellant by this Court on bail application need not be relaxed.

4 I have carefully considered the rival submissions and also perused the material placed on record.

5 The applicant/appellant is convicted of offences punishable under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code by the impugned Judgment and Order of conviction and resultant sentence. For the offence punishable under Section 419 of the Indian Penal Code, the applicant/appellant is sentenced to suffer rigorous imprisonment for three years apart from imposition of fine of Rs.10,000/- and default sentence of one year. For the offence punishable under Section 420 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for five years apart from imposition of fine of Rs.40,00,000/- and default sentence of one year. For the offence

punishable under Sections 467, 468 and 471 of the Indian Penal Code, the applicant/appellant is sentenced to suffer rigorous imprisonment for five years on each count apart from imposition of fine of Rs.10,000/- and default sentence of one year on each count.

6 By now it is settled that sentence in default of payment of fine cannot be an excessive sentence. Valuable reference can be had to this proposition from Judgment of the Honourable Apex Court in the matter of *Palaniappa Gounder v. State of T.N.*¹. It is held by the Honourable Apex Court that grave penalty for default in payment of fine is hardly calculated to serve any social purpose. Even otherwise, the State is free to recover the fine amount imposed on the applicant/accused by resorting to relevant provisions of the Code of Criminal Procedure.

7 Applicant/appellant is a old person aged about 71 years. The co-accused are already released on bail. In fact, this Court had directed his release on bail vide Order dated 10th September 2015. However, still he could not secure his liberty as the applicant/appellant is suffering from penury and could not deposit the amount of Rs.5.00,000/-and bank guarantee of Rs.15,00,000/-. The Order dated 28th April 2016 shows that even his son, who was summoned by this Court has straightway refused to arrange even a small money. Resultantly, though the

¹ (1977) 2 SCC 634

applicant/accused is released on bail by this Court, he is unable to secure his liberty. As of now, the applicant/appellant has undergone four years and nine months sentence apart from remission earned by him.

8 The co-accused are also released on bail and even if the appeal of the applicant/appellant is taken up for final hearing, the question will be that of readiness of the co-accused to work out their appeals.

9 In this view of the matter, I am of the considered opinion that by keeping the liberty of the State to recover the fine amount open, the applicant/appellant deserves relaxation of condition of bail for securing his liberty. As such, the Order :

ORDER

- (i) The condition of depositing a sum of Rs.5,00,000/- in the trial Court as well as that of furnishing bank guarantee in the sum of Rs.15,00,000/-, as reflected in the Order dated 10th December 2015 passed by this Court in Criminal Application No.1326 of 2015, stands relaxed.
- (ii) Similarly, in the mean while on depositing cash security of Rs.50,000/-, initially for a period of four weeks, the applicant/appellant be released on bail in order to arrange for surety.

- (iii) Out of the amount of cash security, that may be deposited by the applicant for getting himself released on bail, on furnishing surety, if any, by the applicant accused, amount of Rs.40,000/- be retained by the Court itself and it be appropriated towards the fine amount.
- (iv) The application is disposed of accordingly.
- (v) Parties to act on authenticated copy of this Order

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Digitally signed
by Raju
Dattatraya
Gaikwad
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