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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1535 OF 2018
IN
CRIMINAL APPEAL No. 1110 OF 2018

Dinesh Baburao More ...Applicant/Appellant
Vs.
CBI ACB and Anr. ...Respondents

WITH
CRIMINAL APPLICATION No. 1536 OF 2018
IN
CRIMINAL APPEAL No. 1110 OF 2018

Ramakrishna Baburao More ...Applicant/Appellant
Vs.
CBI ACB and Anr. ...Respondents

Mr. A.P. Mundargi, Senior Counsel a/w. Niranjan Mundargi a/w. Chandansingh Shekhawat a/w. Yash Deshmukh i/b. Juris Corp.
Mr. H.S. Venegaonkar for CBI
Mr. S.H. Yadav, APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : DECEMBER 17, 2018

P.C.:

1. This is an application under section 389 of the Code of Criminal Procedure, 1973, seeking suspension of substantive sentence awarded to the Applicants by the Special Judge, CBI ACB, Pune in Special Case No. 37 of 2004 vide judgment and order dated 30th August, 2018.

2. Heard respective counsel. Perused the judgment and

notes of evidence. The Applicants happen to be the Original Accused Nos. 4 and 5 in Special Case No. 37 of 2004 and they were prosecuted along with the managerial staff of the Central Bank of India, Camp Branch, Pune. The allegation against the present Applicants is that they were the directors of the group of companies. They had availed loans from Central Bank of India. The said loans were secured loans. There was also a credit facility. It is the allegation that during the period from 1999 to 2001, the present Applicants had floated six firms, which were not actually functioning. Hence, they were fictitious firms. On verification, it was revealed that the firms were genuine but the transaction showed by the directors of the company to avail loan facilities were fictitious and that they were floated by the present Applicants. It appears that the loan proposals were verified by the bank authorities and a loan to the tune of around Rs.10.45 crores was sanctioned in favour of those six firms. According to the prosecution, the loan that was sanctioned, was diverted in favour of M/s. Dinesh Agro Products Ltd., Pune (DAPL). It is also alleged that six accounts had become NPA.

3. It appears from the record that the Central Bank of India had filed applications before the Debt Recovery Tribunal in 2003 seeking recovery of the loan amounts or executing the securities for the purpose of recovery. It is stated before the DRT that demand promissory notes were executed by the respective firms. According to the prosecution in the course of investigation, it had transpired that the present Applicants in conspiracy with the managerial staff of the Central Bank of India had obtained a loan to the extent of Rs.10.45 crores. and had cheated the Bank.

4. First information report was filed by the Central Bank of India on 26th July, 2003. It was alleged in the said first information report that the present Applicants have hatched the conspiracy with the managerial staff of the Central Bank of India. The charge-sheet was filed against the present Applicants along with the other accused, who happen to be the public servants for the offences punishable under section 120B, 409, 420 of the Indian Penal Code and under section 13 (1) (c) and 13(1) (d) r.w. 13 (2) of Prevention of Corruption Act, 1988 and the charges were framed in the said offences. The prosecution has examined 32 witness to bring home the guilt of the accused.

5. The Learned Special Judge has acquitted the public servants i.e. the managerial staff for all the offences lodged against them, holding that there were irregularities but no offence is committed. However, the present Applicants have been convicted for the offences punishable under section 120B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.5,00,000/-, in default, S.I. for one year. The Learned Special Judge has held that the managerial staff had not obtained any gratification from the present Applicants. It is observed that in case there was any exchange of money, the investigating agency i.e. CBI would have taken search of the house of Accused Nos.1,2 and 3. The Learned Judge has held that there are irregularities in sanctioning of loans but same cannot be construed as conspiracy.

6. The learned Senior Counsel for the Applicants submit that the initial charge was that they had entered into a conspiracy along with the officials of the bank. However, subsequently, the bank

officials have been exonerated and acquitted. The Learned Senior Counsel for the Applicants further submits that the findings recorded in paragraph 121 of the judgment is unfounded.

7. In fact, there was verification of the loan proposals. The persons in whose names, the loans were sanctioned, were never made an accused and they were examined as witnesses in the present case. While considering the application under section 389 of the Code of Criminal Procedure Code, 1973, it is pertinent to note in this case that the accused were neither arrested by the investigating agency either after registration of the FIR or after filing of the charge-sheet. That they were produced before the CBI Court after the investigation was completed and charge-sheet was handed over to them. Since 2004, the Applicants are on bail and they have not committed breach of any conditions imposed upon them. It is necessary to take into consideration that since there are proceedings pending before the Debt Recovery Tribunal, the question of recovery of the said loan would not be an issue as all the loans are secured loans.

7. In view of this, the Applicants deserve to be enlarged on bail during the pendency of the bail. It is submitted that the Applicants have deposited the fine amount. Hence, following order:

ORDER

(i) Both the Criminal Applications i.e. APPA No. 1535 of 2018 and APPA 1536 of 2018 are allowed.

(ii) The substantive sentence imposed upon the Applicants vide judgment and order dated 30th August, 2018 is hereby suspended, they be enlarged on bail on furnishing P.R. Bond in a sum of Rs.2,00,000/- each in the like amount.

(iii) The Applicants shall report to the Court of Special Court CBI ACB, Pune once in six months on the date assigned by the Learned CBI Court. Upon failure to attend any two consecutive datess, the Learned CBI Court shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

Both the criminal applications stand disposed of in the aforesaid terms.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam