

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1852 OF 2018
IN
CRIMINAL APPEAL NO. 1322 OF 2018

Gurpur Sudhakar Kamath.

..Appellant.

V/s.

State of Maharashtra & anr.

..Respondents.

Mr. Shital Turakhia, advocate for appellant.

Mr. H.S. Venegaonkar, advocate for respondent-CBI.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : NOVEMBER 28, 2018.

P. C. :

1 Heard the learned Counsel for the applicant, learned Counsel for respondent-CBI and learned APP for State.

2 This is an application under section 389 of the Code of Criminal Procedure, 1973 seeking suspension of substantive sentence imposed upon the applicant by Special Judge(CBI), Gr. Bombay vide Judgment and Order dated 30/8/2018 in CBI Special Case No. 32 of 2007. The applicant is convicted for offence punishable under section 120-B of the Indian Penal Code and sentenced to suffer R.I. for one year and to

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pay fine of Rs. 3,000/- I.d. to suffer further R.I. for two months. The applicant is also convicted for offence punishable under section 420 read with section 120B, under section 467 read with section 120-B, under section 468 read with section 120-B and under section 471 read with section 120-B of the Indian Penal Code and sentenced to suffer R.I. for two years and to pay fine of Rs. 3,000/- I.d. to suffer further R.I. for 3 months on each count. The applicant is also convicted for the offence punishable under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 and is sentenced to suffer R.I. for 2 years and to pay fine of Rs. 5,000/- I.d. to suffer R.I. for 3 months.

3 Learned Counsel for the applicant submits that the applicant was on bail during the pendency of the trial and have not committed breach of any condition imposed upon them. It is also submitted that the substantive sentence has been suspended by the Special Judge(CBI), Gr. Bombay vide order dated 30/8/2018, in order to enable the applicant to file an appeal.

4 In any case, the applicant has been sentenced to a short term sentence. In view of the Judgment of the Hon'ble Apex Court in the case of **Kiran Kumar v/s State of M.P. 2001 AIR SCW 5130**, the applicant would be entitled to be enlarged on bail as this Court is hearing appeal

of the year 2012 and 2014, where the accused are in jail. In view of this, the application deserves to be allowed. It is made clear that the suspension of substantive sentence shall not be construed as suspension of conviction.

5 Hence following order is passed :

ORDER

(i) The application is allowed

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 30/8/2018 passed by Special Judge(CBI), Gr. Bombay in Special CBI Case No. 32 of 2007 is suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall mark his presence before the Special Judge (CBI), Gr. Bombay once in 6 months on the date specified by the Special Court(CBI), Gr. Bombay. Upon failure to attend on two consecutive dates, the Special Court(CBI) Gr. Bombay to report the same to the High Court and the prosecution is also at liberty to file application for cancellation of bail.

(iv) The applicant be enlarged on cash bail for a period of 4 weeks within which the applicant shall furnish a solvent sureties to the

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satisfaction of the Special(CBI) Court, Gr. Bombay.

6 The application is disposed of accordingly.

The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]