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

CRIMINAL APPLICATION No. 376 OF 2019
IN
CRIMINAL APPEAL No. 409 OF 2019

Sanjay Baburao Shinde

...Applicant

Vs.

The CBI, ACB and Anr.

...Respondents

Mr. Dinesh Pandurang Adsule for Applicant

Ms. Ameeta Kuttikrishnan for Respondent -CBI

Mr. S.R. Agarkar -APP

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 14, 2019

P.C.:

1. Heard. This is an application under Section 389 of the Criminal Procedure Code. The Applicant herein is seeking suspension of substantive sentence imposed upon him by the Special Judge, CBI-ACB, Pune vide judgment and order dated 26.2.2019 in Special (CBI) Case No. 24/2018 thereby convicting the Appellant for the offences punishable under Section 420 of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/-, in default, to suffer S.I. for three months. He is also convicted for the offence punishable under Section 13 (1) (d) r.w. 13(2) of Prevention of Corruption Act and sentenced to suffer R.I. for four years and to pay fine of Rs.5,000/-, in default, to suffer S.I. for three months.

2. It is the case of the prosecution that Hindustan Antibiotic

Ltd. (for short 'HAL') had received several complaints about their product viz. 'Humaaur', alleging therein that some spurious and duplicate products are being sold in the Saswad area under the brand name of Humaaur. To inquire into the said complaints, the Sales Manager of HAL along with another person had been to M/s. Mauli Krishi Bhandar and had demanded for the product viz. Humaaur. They had purchased it for Rs.1,00/-. The Applicant was working as a Technician in the Production Department of HAL and the Original Accused No.3, who happens to be the father of the present Applicant was the proprietor of M/s. Omkar Krishi Seva Kendra. It is pertinent to note and it is admitted that in the present case the seized product was not sent for chemical analysis in order to ascertain as to whether the product was / was not manufactured by HAL.

3. The learned APP appearing for the Union of India submits that after utilizing the said product, it was noticed, it could not serve the purpose of which it is used and hence, FIR was lodged.

4. PW-7 was working as Chemical Analist in Indian Drug Research Association and Laboratory. He had tested analysis of medicine. It is submitted that the product that was being sold after expiry date i.e. after the shelf life is over and in fact HAL had stopped manufacturing the said products from May,2012 and December, 2013.

5. Taking into consideration the facts of the case, the Applicant deserves to be enlarged on bail during the pendency of the appeal. **It is made clear that suspension of substantive sentence shall not be construed as suspension of conviction.**

6. Hence, the following order:

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant by the Special Judge, CBI-ACB, Pune vide judgment and order dated 26.2.2019 in Special (CBI) Case No. 24/2018 is hereby suspended. The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- and one or more solvent sureties in the like amount.
- (iii) The Applicant shall cause his presence before the Special Judge, CBI-ACB at Pune once in six months. Upon failure to attend any two consecutive dates, the Learned Special Judge shall make report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.
- (iv) The Applicant would be enlarged on bail subject to depositing the fine amount.

The application stands disposed of in the aforesaid terms.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam