

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 502 OF 2019
IN
CRIMINAL APPEAL NO. 509 OF 2019

Avinash Bansi Patra	..Applicant
v/s.	
The State of Maharashtra and Anr.	..Respondents

Mr. Aniket U. Nikam for the Applicant.
Mr. H.S. Venegaokar for Respondent-CBI.
Mr. Y.M. Nakhwa, APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 4th April, 2019.

P.C.

1. Heard.
2. This is an application filed under Section 389 of Cr.P.C. the applicant herein is seeking suspension of substantive sentence imposed upon the applicant by Special Judge (CBI-ACB), Pune in Special Case No. 63 of 2018, vide judgment and order dated 26th March 2019. The applicant has been convicted for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for three years and to pay fine amount of Rs. 5000/- (rupees five thousand), in default to suffer simple imprisonment for three months. The applicant is also

convicted for offence under section 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for four years and to pay fine amount of Rs. 5000/- (rupees five thousand), in default to suffer simple imprisonment for four months

3. The learned counsel for the applicant submits that there are several lacunas in the process of investigation and that the prosecution has failed to prove the demand as well as there is no voice verification, although the conversation between the complainant and the accused were recorded on a cell phone.

4. It is submitted that the applicant was on bail during the pendency of the trial and he has not committed breach of any conditions imposed upon him. The sentence imposed upon him is short term sentence. As against this the learned Counsel for Respondent Mr. Venegaokar submits that prosecution has proved its case beyond the shadow of reasonable doubt. The lacunas need not be considered at this stage, since the conduct of the accused is sufficient to prove that the accused has not been successful in rebutting the presumption under section 20 of Prevention of Corruption Act, 1988.

5. In fact, all these issues can be considered at the stage of final hearing. As on today, the applicant has been taken into custody on 26th March 2019 and seeking suspension of substantive sentence. In view of the fact it is short term sentence and this court is hearing the appeals of the year 2013. It would be appropriate to enlarge the applicant on bail as he would be entitled to the extension of same

relief during the pendency of the appeal. **However, it is made clear that suspension of substantive sentence shall not be considered as suspension of conviction.** Hence, the following order:-

Order

- i) The Criminal Application is allowed.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 26th March 2019 is hereby suspended.
- iii) The applicant 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.
- iv) The applicant shall cause his presence before the Special Judge (CBI-ACB), Pune, once in three months on the date assigned by the learned Special Judge.
- v) Upon failure to attend any two consecutive dates, the learned Special Judge (CBI-ACB), Pune shall make report to the High Court and the prosecution would be at liberty to seek cancellation of bail.
- vi) The application stands disposed of.

Parties to act on an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J)