

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 550 OF 2019
IN
CRIMINAL APPEAL NO. 552 OF 2019

Santosh Hirachand Jain. ..Applicant.
V/s.
The State of Maharashtra & anr. ..Respondents.

WITH
CRIMINAL APPLICATION NO. 517 OF 2019
IN
CRIMINAL APPEAL No. 521 OF 2019

Jitendra Jamnadas Doshi. ..Applicant.
V/s.
The State of Maharashtra & anr. ..Respondents.

WITH
CRIMINAL APPLICATION NO. 609 OF 2019
IN
CRIMINAL APPEAL No. 517 OF 2019

Sushil Vettatch @ Sushil Nair. ..Applicant.
V/s.
The State of Maharashtra & anr. ..Respondents.

Mr. Tushar Narayan Sonawane, advocate for applicant in APPA 550/19 and appellant in Appeal 552/2019.

Mr. Suparnaraj B. Dhotre, advocate for applicant in APPA 517/2019 and appellant in Appeal No. 521/2019.

Mr. Khushood Akhtar I/b. Mr. Saeed Akhtar, advocate for applicant in APPA 609/2019 and appellant in Appeal No. 517/2019.

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Ms. Purnima H. Kantharia, advocate for respondent No. 2.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 15, 2019.

P. C. :

1 Heard the learned Counsel for the applicants, learned Counsel for the respondent No. 2 and the learned APP for State.

2 These are applications under section 389 of the Code of Criminal Procedure, 1973 seeking suspension of substantive sentence imposed upon the applicants. The applicants herein are convicted for the offence punishable under section 420 read with section 120B of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 25,000/- each I.d. to suffer S.I. for 3 months. The applicants herein are also convicted for offence punishable under section 467 read with section 120B of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 25,000/- each I.d. to suffer S.I. for 3 months. The applicants are also convicted for offence punishable under section 471 read with section 465 both read with section 120B of the Indian Penal Code and sentenced to suffer R.I. for 2 years and to pay fine of Rs. 2,000/- each I.d. to suffer S.I. for one month.

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3 The respective Counsel submit that the applicants were on bail during the pendency of the trial and that they have been taken into custody on 22/3/2019 and therefore, they are entitled to the extension of the same relief during the pendency of the appeal, by virtue of the fact that the sentence imposed upon the applicant is a short term sentence.

4 Learned Counsel for the respondent has vehemently urged that the offence alleged against the applicants is a serious offence in as much as there are several persons duped by the present applicants. The evidence of P.W. 10 Parulkumar Parmalal Shah would indicate that One day he had learnt that a bogus demat account is opened in his name. He has not mentioned the date on which he learnt about the same. No steps were taken by P.W. 10 to bring it to the notice of the authorities that a bogus demat account has been opened in his name. He has denied that the photograph affixed on the opening form for demat account is not his photograph and it is not signed by him. It is pertinent to note that the specimen signature of the P.W. 10 were obtained in the course of investigation, but were not sent for forensic laboratory for verification or handwriting experts. There are several lacunas in the investigation itself.

5 Be that as it may, this Court is hearing jail appeal of the year

20013. The sentence imposed upon the applicant is a short term sentence and it would not be possible to hear the appeal at earliest and hence, in view of the Judgment of the Apex Court in the case of Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130 for seeking suspension of substantive sentence during the pendency of the appeal which cannot be heard at the earliest thereby causing the prayer to become infructuous.

6 In view of the above the applicants deserve to be enlarged on bail. Hence, following order is passed :

ORDER

- (i) The applications are allowed.
- (ii) The substantive sentence imposed upon the applicants vide Judgment and Order dated 22/3/2019 by the Special Judge(CBI), CBI Special Court, City Civil and Sessions Court, Gr. Bombay is hereby suspended. The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each and one or more solvent sureties in the like amount.
- (iii) Upon being released on bail, the applicants shall report to the Special Court (CBI), Gr. Bombay once in six months on the date assigned

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by the learned Special Court, Gr. Bombay. Upon failure to attend any two consecutive dates, the learned Special Court, Gr. Bombay shall report to the High Court and the prosecution is at liberty to move for cancellation of bail.

(iv) The applicants shall furnish their residential addresses and their contact numbers to the concerned Special Court, Gr. Bombay.

7 The applications are disposed of accordingly.
The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]