

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

**CRIMINAL APPLICATION NO.759 OF 2019
IN
CRIMINAL APPEAL NO.708 OF 2019**

Narendra Chotalal Patel ...Applicant

vs.

The State of Maharashtra and Anr. ...Respondents

Mr.Sandeep Pasbola a/w Mr. Karl Rustom Khan, Mr. Pathan for the applicant/appellant.

Ms.Mhatre, APP for Respondent No.1.

Ms.Ameeta Kuttikrishnan for Respondent No.2.

**CORAM : B. P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE : 11/06/2019.

P.C.:

. Applicant is the appellant in Criminal Appeal No.708/2019. He was accused No.4 in Criminal Special Case CBI No.12/2001. The Special Judge (CBI) has on 30/4/2019 convicted him with rigorous imprisonment of 7 years for offence punishable under section 420, 467 and 468 of IPC. He is sentenced to rigorous imprisonment of 2 years for offence punishable under 467 of IPC. There is also punishment of fine which ranges from Rs.2 crores to Rs.1 Lakh. Total fine amount is in excess of Rs. 5.3 crores. He is sentenced for life imprisonment and fine of Rs. 2 crores for offence punishable under section 467 of IPC. For offence punishable under section 120-B of IPC, he is sentenced to suffer rigorous imprisonment for 7 years. Sentences are to run concurrently.

2. The submission of learned counsel for the applicant is trial

against accused Nos.1,2 and 4 was concluded on 4/9/2015 and the then presiding officer has imposed rigorous imprisonment of three years. There is no imprisonment for period exceeding three years for any offence imposed on these accused persons. These accused persons have approached this Court in appeal and they have been released on bail.

3. Learned counsel submits that as the present applicant was absconding, trial against him concluded, later on. Very harsh and unsustainable punishment has been inflicted upon him. The said applicant was in US and was arrested in the year 2016. Thus, within a month or two, he would be completing three years of imprisonment which is maximum punishment imposed on other accused persons. Learned counsel states that the quantum of punishment of 7 years or fine is in violation of Article 21 of the Constitution of India.

4. Learned APP for the State is strongly opposing his release on bail. She pointed out that the cheque book used for misappropriating the amount or for withdrawing the amount by playing fraud, was received by the present applicant, therefore he has main role in the matter. She pointed out that attention of Trial Court was invited to its earlier judgment and thereafter the impugned judgment has been pronounced.

5. During arguments, we find that filing of appeal by other accused persons and fact of their release on bail is not in dispute. There is no effort by State for enhancement of their punishment. Learned counsel for the applicant has stated that applicant shall stay in India during pendency of appeal and his nephew who is permanent resident of India, is ready and willing to stand as surety for said purpose.

6. The provisions of section 120-B are invoked and both

judgments find the offence of criminal conspiracy duly proved. Conspiracy is not commenced after receipt of cheque book by the present applicant. According to prosecution conspiracy was hatched at earlier point of time i.e. when STDR of Rs.1 crore in the name of complainant NRI couple was converted into TDR. It is therefore apparent that cheque book was received by present applicant as part of that conspiracy and steps to deceive NRI couple who secured STDR were already initiated. In this situation, the distinction sought to be made by learned APP appears to be erroneous at least at this stage.

7. The other accused persons who have participated in conspiracy have been visited with rigorous imprisonment of three years and are already released on bail by this Court. The absconding accused at worst therefore could have been punished with imprisonment for three years. He has been arrested in 2016 and in a month or two, he would also be completing three years of imprisonment.

8. Taking overall view of the matter and that in earlier judgment dated 4/9/2015 Special Judge, CBI has imposed total fine of Rs.28,000/- only, we are inclined to order his release on bail during pendency of appeal on following terms and conditions:

- i) Applicant shall deposit with Trial Court amount of Rs.1 Lakh provisionally towards fine;
- ii) He shall surrender his passport to the U.O.I. and undertake not to use it during pendency of this appeal;
- iii) He shall execute personal bond in the sum of Rs.5 lakhs and shall also give an independent surety in the like amount within a period of two weeks for his stay in India and for prosecution of this

appeal;

iv) He shall furnish address at which he shall always be available during pendency of this appeal along with his contact number/s. Similar details in relation to his surety shall also be furnished;

v) He shall attend the office of Registrar/Superintendent of Special Judge, CBI, Greater Bombay on first working Monday after a gap of every two months regularly during pendency of appeal.

vi) He shall also keep vakalatnama of his advocate filed in this appeal alive during pendency thereof and shall not be entitled to any separate notice for final hearing;

vii) Omission to adhere to any term of this order shall entitle the respondent to take him in custody.

9) Application is accordingly allowed and disposed of.

CRIMINAL APPEAL NO.708 OF 2019

Heard. Admit. Learned APP waives service of notice.

(SANDEEP K. SHINDE, J.)

(B. P. DHARMADHIKARI, J.)