**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 881 OF 2019**
**WITH**
**CRIMINAL APPLICATION NO. 882 OF 2019**
**IN**
**CRIMINAL APPEAL NO. 790 OF 2019**
**WITH**
**CONNECTED MATTERS**

Shri Manoharlal Hariram Ahuja … Applicant

Versus

State of Maharashtra and Ors. … Respondents

Mr. Nitin Pradhan, Sr. counsel a/w Mr. Robin George i/by Lokegaonkar U.A. for the appellants in Criminal Application No. 881 of 2019 and 882 of 2019.

Mrs. Pournima Kantharia for CBI.

Mr.O.A. Das for Bank of India.

Mr. Aabad Ponda a/w Mr. Digant Kakkad for accused no. 6.

Mr. J.P. Yagnik and Mr. Arfan Sait, APP for the State.

**CORAM : B.P. DHARMADHIKARI &**
**MRS.SWAPNA JOSHI, JJ.**
**DATE : AUGUST 09, 2019**

**<u>P.C.</u>**:

Accused nos.1 and 2 in Special Case No. 69 of 2005 are before this court for release on bail and also for suspension of the sentence. The Special Court for CBI at Greater Bombay has on 26/4/2019 sentenced both of them to various punishments. It is important that they are sentenced to suffer imprisonment for life under section 467 IPC while to RI for two years under section 471 IPC.

2. The other sections under which they are punished are sections 420, 466, 468 and 120-B IPC. The total fine amount to be recovered from them is Rs. 3 Crores. The Court has also observed that the punishments mentioned in clause (i), (ii) and (iii) of its order are to run consecutively while the rest of the sentences of imprisonment are to run concurrently along with sentence of life imprisonment. If fine amount is deposited, the amount of Rs. 3 Crores has to be given to complainant Bank of India as per section 357 Cr.P.C.

3. Learned counsel for the accused nos. 1 and 2 submits that accused no. 2 had hardly completed 18 years of age and was a student at the time of commission of the alleged offence. It is submitted that his father accused no.1 have shown him as partner between the period 2000 to 2003 and because of that position only he has been implicated and punished.

4. Our attention is drawn to the fact that there is no specific charge under section 467 IPC against accused nos. 1 and 2. It is further submitted that Shri. Bhagwan Joshi then functioning as Assistant General Manager in Bank of India and accused no. 6 in the matter, was charged for the offence punishable under section 13(2) read with 13(1)(d)(ii) of Prevention of Corruption Act, 1988. However, to enable the Special Court to try the present accused persons with accused no. 6, no link of their IPC offence (alleged) and offence under Prevention of Corruption Act is even alleged in the charge as framed. The conspiracy under section 120 B IPC has not been alleged to be associated with section 13(1)(d)(ii) of Prevention of Corruption Act. As such the trial of the present accused persons by the said court is not proper.

5. In so far as life imprisonment is concerned, submission is in the absence of charge under section 467 IPC, the conviction itself is unwarranted. Under section 471 IPC, the trial court has preferred to impose RI for two years only. It is further submitted that one of the important witness for prosecution namely PW 2 expired after recording of part of his examination-in-chief and as such accused nos. 1 and 2 did not get any opportunity to cross examine him. Submission in this situation, is conviction under

section 467 IPC is unwarranted and the accused persons must be released on bail during the pendnecy of the appeal.

6. Lastly in so far as need to suspend the judgment and order is concerned, learned counsel states that the monetary dispute was already settled with Bank of India and accordingly full payment was received by it. Flat of accused nos. 1 and 2 on which charge was created has been realized by Bank of India and as such the Bank is not entitled to receive any compensation under section 357 Cr.P.C.

7. Our attention has been drawn to the order dated 11/6/2019 passed in Criminal Appeal No.759 of 2019 to urge that in somewhat similar situation, this Court has granted bail to accused therein. One of us (B.P. Dharmadhikari,J.) is party to that order.

8. Learned counsel for the Bank of India relies upon the reply affidavit and submits that at the relevant time considering the commercial interest, the offer made was accepted and against total amount of Rs. 261.08 lacs then due, amount of Rs. 1,25,00,000/- was accepted in settlement. The residential flat of

accused nos. 1 and 2 was then released. However, this action does not in any way result in waiver of other rights to recover the balance amount which the Bank has in law. It is submitted that the trial court has rightly granted compensation to it under section 357 Cr.P.C.

9. Learned APP has invited our attention to the judgment of the Hon'ble Apex Court in Darbara Singh Vs. State of Punjab : (2012) 10 SCC 476 to urge that no objection regarding non framing of charge was raised at the earliest possible opportunity. With open eyes, the evidence has been led and after adverse judgment, belatedly, the grievance is being made. Contention is no prejudice has been caused to accused nos. 1 and 2 and therefore, it has not been demonstrated.

10. It is submitted that accused no. 2 was a partner and therefore, legally answerable and has been accordingly proceeded against. Though PW 2 unfortunately could not be made available, all documents of Bank of India have been produced and as the other officers of the Bank concerned with those documents have been examined, the contention that accused persons could not cross examine PW 2 is erroneous.

Learned PP submits that the first charge framed by the trial court is very widely worded and though section 467 IPC has not been expressly mentioned therein, the ingredients thereof are apparent.

11. Our attention is also invited to the judgment of the Apex Court in (2003) 8 Supreme Court Cases 628 : Vivek Gupta Vs.Central Bureau of Investigation and anr to urge that there provisions of sections 3 and 4 of Prevention of Corruption Act and section 220 and 223 of Criminal Procedure Code have been looked into and the Hon'ble Apex Court has found that in such matters, Special Court is competent to take cognizance.

12. Lastly learned APP states that the fact of introduction of accused no. 5 by accused nos. 1 and 2 cannot be disputed. Accused no. 5 has impersonated and presented himself as M.P. Arneja. His real identity was/is known to accused nos. 1 and 2. In the light of this glaring fact, More arguments on this aspect are not necessary at this stage.

13. After hearing respective counsel, we find from the charge as framed by Special Judge for CBI Cases, Mumbai dated 12/8/2010

speaking. Though in second charge against accused no. 5 there is express mention of section 419 IPC and similarly in the latter part of the charge other sections of IPC have been specifically mentioned, it can be seen that section 467 IPC has not been mentioned anywhere. The omission therefore, appears to be only inadvertent. The first part of charge which gives necessary facts revealing that the intention was to invoke section 467 IPC only.

14. Learned counsel for accused nos. 1 and 2 has attempted to distinguish the judgment in Darbara Singh (supra) by urging that it is a judgment delivered at fag end of the trial and also after the delivery of the judgment on merits in the appeal. Thus there the opportunity to demonstrate prejudice could have been availed. Here the matter is at preliminary stage and as such the accused nos. 1 and 2 will demonstrate the prejudice at the stage of final hearing of the present appeal. We find the effort misconceived. The trial is already over. After charge framed on 12/8/2010 and before leading evidence, the objection could have been raised. Attention of the trial court could have been drawn even during the arguments that there was no charge under section 467 IPC. It appears that the accused nos. 1 and 2 have not objected to omission of mention any other section of IPC like

section 467 in the first part. The said part only expressly mentions section 120B IPC. However, the charge shows that accused nos. 1 and 2 approached the Bank on 28/8/2000 for various credit facilities and at that time deposited forged title deeds of the properties situated at Versova. This property at Versova is shown to be belonging to one M.P. Arneja and the title verification report was also accordingly obtained. Later on it became clear that the said property was actually belonging to one Smt. Anusaya Kantilal Shaha.

15. The other judgment of the Hon'ble Apex Court in the case of Vivek Gupta (supra) after looking into sections 3 and 4(3) of the Prevention of Corruption Act and section 220 and section 223(d) of Cr.P.C. holds that such trial by the Special Court is not prohibited.

16. It is not the case of the applicants before this Court that the Special Court could not have taken cognizance of the charge against accused no. 6 Bhagwan Joshi who was then functioning as Assistant General Manager in Bank of India.

17. The charge framed is composite and while pointing the

offence committed by accused no. 6, there is mention of the role of accused nos. 1 and 2 and then there is reference to provisions of section 13(2) read with 13(1)(d)(ii) of Prevention of Corruption Act.

18. In the opening part of the charge, there is again reference to accused no. 6, necessary facts and then there is role of other accused persons and reference to section 120B of IPC. We therefore, find the arguments raised by the counsel for the accused persons supra are too technical.

19. The Order of this court dated 11/6/2019 in Criminal Application No. 759 of 2019 shows that there the other accused persons who were convicted had already approached this Court and they were released on bail. It is in that backdrop that the request of applicant Narendra therein for release on bail has been looked into. During the arguments, contention of learned APP that Narendra was absconding during the trial has also been looked into. This Court has also then taken a note of the fact that Narendra was sentenced to maximum punishment of seven years while co-accused were punished only with the imprisonment for three years. These facts weighed with the

Court in granting bail to Narendra. The facts at hand are entirely different. The arguments noted supra and its consideration shows that there is no merit in the application seeking bail.

20. Similarly insofar as payment of fine amount is concerned, the complainant bank appears to be justified prima facie in submitting that the arrangement then made on civil side and steps taken to protect commercial interest, do not preclude it from taking the benefit under section 357 Cr.P.C.

21. We therefore, reject both the applications.

**(MRS.SWAPNA JOSHI, J.)** **(B.P. DHARMADHIKARI, J.)**