IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2075 OF 2018
IN
CRIMINAL APPEAL NO.1550 OF 2018

Manohar Jadhav .... Applicant

Vs.

1 The State of Maharashtra

2 Central Bureau of Investigation
Economic Offence Wing, Mumbai

3 Bank of Baroda, Versova Branch.
Andheri (West), Mumbai .... Respondents

WITH
CRIMINAL APPLICATION NO.2077 OF 2018
IN
CRIMINAL APPEAL NO.1552 OF 2018

Mr. Lalchand Prabhatilal Verma .... Applicant

Vs.

1 Central Bureau of Investigation
Economic Offence Wing, Mumbai

2 The State of Maharashtra

3 Bank of Baroda, Versova Branch.
Andheri (West), Mumbai .... Respondents

Mr. Niranjan Mundargi I/by Mr. Rushit Thakkar for the applicant/appellant in APPA 2075 of 2018 in Appeal No. 1550 of 2018.

Mr. Abhijit P. Kulkarni for the applicant/appellant in APPA No. 2077 of 2018 in Appeal No. 1552 of 2018.

Ms. Ameeta Kuttikrishnan for the respondent-CBI.

Mr. S.S. Pednekar, APP for the State of Maharashtra.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 10th January 2019

P.C.:

1 Heard the respective counsel.

2 These are the applications under Section 389 Code of Criminal Procedure. The applicants herein are convicted by the Special Judge (CBI) Greater Mumbai, for the offences punishable under Sections 120(B), 477 (A), 420, 468, 471 read with 120(B) of Indian Penal Code and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for seven years (for the offences punishable under Sections 120(B), 477(A) 420, 468 read with 120(B) of Indian Penal Code), one year, (for the offence punishable under Sections 471 read with 120(B) of Indian Penal Code and 13(1)(d) read with Section

13(2) of Prevention of Corruption Act), and to pay a fine of Rs.5,00,000/-, 1,00,000, 5000/-, 5000/-, 5000/-, 5000/- in default to suffer simple imprisonment for two years., 1½ years, one year, one year, six months and one year respectively.

3 It is the case of the prosecution that the present applicants were working as Credit Managers of Bank of Baroda, Jogeshwari Branch, Mumbai. It is the case of the prosecution that M/s Vedant & Company had applied for Cash Credit Facility of Rs.1.00 Crore by offering primary security of hypothecation and stock and book debts of Vedant & Company and collateral security of one flat and shop situated at Leela Cliff CHS, Borivli (West), Mumbai. It is the case of the prosecution that one Anant Sitaram Borkar (PW-8) was working as Senior Manager in the said bank in 2007. He was entrusted with the work of credit processing of proposals. He had received a loan proposal from Vanraj Shah and Vedant & Company seeking working capital. He had consulted Mr. Ujwal Ghosh, who was the Head of SME Loan Factory and the loan proposal was processed. He had submitted the audited balance-sheet

of three years i.e. 2004 to 2007 of Vedant & Company to Mr. Jadhav i.e. the accused no.2. It is further alleged that after the loan proposal was forwarded by PW-8, the accused no. 2 alongwith PW-9 had been to Kalamboli to search for the deeds as per instructions of the superiors, a report was prepared. According to PW-9, he had visited adjacent companies to explore as to whether they were in need of any loan. According to PW-9, accused no.2 had consulted Mr.Vanraj Shah (deceased-accused no. 1) and they had found a board in the name of Vedant & Company. Thereafter they had submitted the documents for processing the loan.

4 Learned counsel for the applicants submits that the role of the applicants has ended at that stage and they were not part and parcel of either the committee sanctioning the loan or disbursement of loan. The accused no. 2 had submitted a report on 21st May 2007. The accused no. 3 had then visited the spot on 11th June 2007 and had submitted a report on 20th June 2007. He had thereafter submitted a report on 27th June 2007. He had mentioned in column no. 3(c) that it is a rented premises and that it is an open godown.

The whole case begins with the submission of the audited accounts of Vedant & Company for three years i.e. from 2004 to 2007, however, the prosecution has not either examined the Chartered Accountant, who had prepared the reports and neither there is any enquiry with the Income-Tax department.

5 Learned counsel for the respondent submits that a bogus company has been floated by the original accused no.1 and by placing implicit reliance on the reports submitted by the accused nos. 2 and 3, the loans were sanctioned and disbursed in favour of the original accused no. 1 (deceased). Learned counsel further submits that the prosecution has proved the case of falsification of accounts and that the bogus reports were submitted in connivance with the original accused no.1. It is also submitted that the said property belonged to one Tukaram who has expired in the course of investigation. However, the prosecution has not called for any title deeds of the godown.

6 Learned counsel for the applicants submits that there is no case of falsification of accounts as the applicants herein have not tampered with the accounts of the bank. The subject matter of the prosecution case is sanctioning of undeserved loans. The applicants were never subjected to custodial interrogation. Respective counsel submit that after completion of investigation at the stage of filing of charge-sheet, the applicants were summoned and the charge-sheets were handed over to the accused relying upon the documentary evidence. Be that as it may, taking into consideration the nature of evidence adduced by the prosecution against the present applicants, the substantive sentence deserve to be suspended. They were on bail during trial and have not committed breach of any conditions imposed upon them. Hence, they would be entitled to extension of same relief.

7 As far as accused no. 2 is concerned, the learned counsel for the applicants submits that the applicant has deposited fine amount of Rs.6,20,000/-. Learned counsel for the original accused no. 3 in Criminal Appeal No. 1552 of 2018 submits that he is not

knowing as to whether the fine amount is deposited, in any case, he would be entitled to be released on bail subject to payment of fine.

8 In view of the judgment of the Hon'ble Apex Court in the case of **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130**, the substantive sentence imposed upon the applicants deserve to be suspended during the pendency of the appeal. In view of above, taking into consideration that the sentence imposed upon the applicants is a short term sentence, it would be a fit case for suspension of the substantive sentence. However, it is made clear that the suspension of substantive sentence shall not be construed as suspension of conviction. Hence, the following order.

O R D E R

i) The applications are allowed.

ii) The substantive sentence imposed upon the applicants vide judgment and order dated 20th December 2018 is hereby suspended.

iii) The applicants be enlarged on bail on furnishing P.R. bonds in the sum of Rs.1,00,000/- each with one or more solvent sureties in the like amount.

iv) The applicants herein be enlarged on provisional cash bail for a period of six weeks, within that period they shall furnish solvent sureties to the satisfaction of the Special Court (CBI).

v) The applicants shall report to the Court of Special Judge (CBI), Greater Mumbai once in six months on the date assigned by the Special Judge.

vi) Upon failure to attend any two consecutive dates, the Special Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

vii) Parties to act on authenticated copy of this order.

(*Smt. Sadhana S. Jadhav*, J)

Note : Cause title is modified as per order dated 21st January 2019.