

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.78/2019
Damodhar s/o Shankar Neware

..VS..

The State of Maharashtra, thr. Deputy Superintendent, Anti Corruption
Bureau, Bhandara

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri Rishabh Khemuka, Counsel for the appellant.
Mrs.S.V.Kolhe, Addl.P.P. for the respondent/State.

CORAM : V.M. DESHPANDE, J.
DATED : FEBRUARY 4, 2019.

Heard learned counsel Shri Rishabh Khemuka
for the appellant. **ADMIT.** Learned Additional Public
Prosecutor Mrs.S.V.Kolhe waives service on behalf of the
respondent/State.

Criminal Application (APPA) No.125/2019

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. Heard learned counsel Shri Rishabh Khemuka for the applicant and learned Additional Public Prosecutor Mrs.S.V.Kolhe for the non-applicant/State.
3. By judgment and order dated 19.1.2019 passed by learned Special Judge (under Prevention of Corruption Act), Bhandara in Special (ACB) Criminal Case No.3/2012, the applicant is convicted for offence under Section 7 of the

Prevention of Corruption Act and sentenced to suffer imprisonment for 1 year and to pay a fine of Rs.5000/- and in default of payment of the fine amount to suffer imprisonment for 6 months. He is also convicted for offence under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced to suffer imprisonment for 1 year and to pay a fine of Rs.5000/- and in default of payment of the fine amount to suffer imprisonment for 6 months.

4. Learned counsel Shri Rishabh Khemuka for the applicant submits that after trap, when fingers of the applicant were dipped in solution of powder, colour of the said solution did not change.

5. Exhibit 25 is post trap panchnama. Recitals of the same shows that the solution of sodium carbonate did not change when the fingers of the applicant were dipped in the said solution.

6. Further, from chargesheet it is clear that on the very same day of the trap before Investigating Officer the applicant gave his statement to show that alleged amount of bribe was thrust into his pocket. The said defence was not taken during the course of the trial but it was taken at the time of trap itself.

7. Looking to the evidence brought on record, I am of the view that the applicant has made out a *prima facie* case. Hence, I pass following order:

ORDER

(i) The criminal application is allowed.

(ii) The substantive jail sentence imposed upon the applicant by judgment and order dated 19.1.2019 passed by learned Special Judge (under Prevention of Corruption Act), Bhandara in Special (ACB) Criminal Case No.3/2012 shall remain suspended during the pendency of the criminal appeal.

(iii) The applicant shall be released on bail on he executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iv) The applicant is directed to execute fresh bonds before the Court below within a period of one month from today.

(v) The applicant shall remain personally present before this Court at the time of final hearing of the appeal.

JUDGE

!! BRW !!

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