

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.1781 OF 2020
IN
CRIMINAL APPEAL NO.529 OF 2020**

Rajendra Ganpat More,
Age 56 years, Occupation Service,
R/o Plot No.14, Behind Punshi Petrol
Pump, Dhule Road, Chalisgaon
Tq. Chalisgaon Dist. Jalgaon.

...Applicant
(Original accused No.2)

VERSUS

The State of Maharashtra.

...Respondent

.....
Advocate for Applicant : Mr. Joydeep Chatterji.
APP for Respondent-State : Ms. R. P. Gour.
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
13-10-2020.**

**Date of Pronouncing The Order :
03-11-2020.**

ORDER :

1. Present application has been filed for suspension of sentence and releasing the applicant on bail. The applicant has been convicted by learned Special Judge/ Additional Sessions Judge, Jalgaon under Prevention of Corruption Act in Special A.C.B. Case No.24 of 2015, on

25-09-2020. He has been sentenced thus :

“1) The accused No.1 Sheshrao alias Bhola Gulabrao Ahirrao is hereby convicted for the offence under Section 12 of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5000/- (Rs.Five Thousand only) in default of payment of fine, he shall suffer simple imprisonment for three months.

2) The accused No.2 Rajendra Ganpat More is hereby convicted for the offence under Section 7 of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5000/- (Rs. Five Thousand only) in default of payment of fine, he shall suffer simple imprisonment for three months.

3) The accused No.2 Rajendra Ganpat More is hereby convicted for the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.5000/- (Rs. Five Thousand only) in default of payment of fine, he shall suffer simple imprisonment for three months....”

2. Heard learned Advocate Mr. Joydeep Chatterji for the applicant and learned Additional Public Prosecutor Ms. R. P. Gour for respondent- State.

3. It has been vehemently submitted on behalf of the applicant that, the learned Special Judge has not appreciated the evidence properly and has come to a wrong conclusion. He failed to consider that, there was a previous financial transaction between the cousin

brother of the complainant with accused. In fact on the day of trap the complainant had tried to contact the accused three to four times on mobile, however he was busy. But when the accused had gone to Panchayat Samity Office, complainant contacted him, and accused accepted that amount from him under the impression that it is the amount given by the cousin brother of the complainant. There appears to be a business rivalry and competition between the complainant and those persons who were involved in the similar business and, therefore, the accused has been implicated. The applicant has high hopes in his appeal. He was on bail throughout the trial. He has not misused the liberty. He is suffering from ailments. He is 48 % disabled. So also he has undergone coronary angioplasty in 2013 and still under treatment. It would take long time to reach his appeal and, therefore, till the appeal is decided, the sentence deserves to be suspended.

4. The learned Additional Public Prosecutor strongly opposed the application and supported the reasons given by the learned Special Judge while convicting the applicant. It has been submitted that, the accused is accepting that he received the tainted money from the complainant and the said amount was found in his possession

when the raiding party searched his person. Therefore, presumption under Section 20 of the Prevention of Corruption Act would come into play and it was for the accused person to explain as to how that tainted amount came in his possession. Though he has stated that, there was some financial transactions between the cousin brother of the complainant with him, he has not led proper and cogent evidence to support his explanation. The corrupt government officials need no sympathy and, therefore, the application deserves to be rejected.

5. At the outset, the points which are in favour of the applicant are that, the sentence that has been imposed is small sentence. Secondly, he was on bail throughout the trial and he has not misused the liberty. It is to be noted that, the applicant is a government servant. Complainant had come with a case that, being contractor he had completed the work of laying down aggregate (khadi) on Bhoras Budruk to Chalisgaon road. He further states that, the bill of the said work was sanctioned after measurement of the work was made by the present applicant and the report of the measurement was to be submitted to Panchayat Samity. Complainant has stated that, the applicant/accused was avoiding the

said work and, therefore, he had met the accused. Accused had then demanded amount of Rs.10,000/- for the work done by him and also the amount of Rs.10,000/- for the work done by the cousin brother of the complainant. Thus complainant says that, accused had demanded amount of Rs.20,000/- from the complainant. The prosecution has examined the complainant Sunil Sahebrao Patil as P.W.1, panch witness Digambar Prabhakar Patil as P.W.2 to prove the pre-trap and post-trap panchanamas, Astik Kumar Hirdhayram Pandey, the then Chief-Executive officer of Zilla Parishad i.e. sanctioning authority as P.W.3, and Dnyandeo Dhondiram Gaware, Investigating Officer-cum-informant as P.W.4.

6. From the cross-examination of the complainant as well as the Investigating Officer it appears that, one Kishor Patil was making contact to the accused on the day of trap who is stated to be the cousin brother of the complainant. The applicant has given his own defence stating that, certain amount was due from Patil to him and, therefore, he states that he accepted that amount under the impression that that amount has been given by Patil. He had also given written statement under Section 313 of Code of Criminal Procedure on the same point. All these aspects are then required to

be gone into as to whether the offence has been proved beyond reasonable doubt or not and, therefore, the application deserves to be allowed till the final hearing and conclusion of the criminal appeal. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The substantive sentence imposed on the applicant in Special A.C.B. Case No.24 of 2015, by learned Special Judge/ Additional Sessions Judge, Jalgaon, on 25-09-2020, against the present applicant Rajendra Ganpat More is hereby suspended till the conclusion and final hearing of Criminal Appeal No.529 of 2020.
- 3) The applicant/ appellant Rajendra Ganpat More be released on P.R. of Rs.30,000/- (in words rupees thirty thousand only) with two sureties of Rs.15,000/- each (in words rupees fifteen thousand only).
- 4) Applicant/ appellant shall not commit any criminal activity.
- 5) Applicant/ appellant to remain present before the learned Special Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders a bail papers and, thereafter, the Special

Judge to fix dates for his subsequent appearances.

6) In case of two consecutive defaults on the part of appellant to remain present before the Special Court, the Special Court to inform this Court about the same, and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the appellant.

7) Bail before Special/ Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-