

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

**CRIMINAL APPLICATION NO. 2052 OF 2018
IN
CRIMINAL APPEAL NO. 20 OF 2017**

Anil Laxmichand Menda

.. Applicant

v/s.

The State of Maharashtra & Anr.

.. Respondents

Mr. Niranjan Mundargi i/b Ms. Anjali Patil for the applicant

Ms. M.R. Tidke, APP for respondent no.1

Mr. Hiten Venegaonkar for respondent no.2 - CBI

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 25th FEBRUARY, 2020

PRONOUNCED ON : 2nd JUNE, 2020

P. C.

1. This is an application for suspension of execution of the sentence, pending the appeal.

2. The applicant has been charge-sheeted by respondent no.2 in Special Case No. 74 of 2004 of the offences punishable under Section 12(2) of the Prevention of Corruption Act and has been convicted to undergo rigorous imprisonment for 5 years with fine of Rs.10,000/-.

He has further been convicted of the offences punishable under

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Sections 420 r/w Section 120(B) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years with fine of Rs.10,000/-. The applicant has been convicted under Section 465 r/w Section 120B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 1 year with fine of Rs.1,000/-. The applicant has also been convicted under Section 467 r/w Section 120B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 year with fine of Rs.5,000/-. Lastly, he has been convicted under Section 471 r/w Section 120B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 1 year with fine of Rs.1,000/-.

3. After preferring an appeal, the applicant had moved an application for bail being Criminal Application No. 44 of 2017 before this Court, which came to be rejected by order dated 14.02.2017 (Coram: A.M. Badar, J.) after hearing the parties. However, the appeal is admitted.

4. Subsequently, this Court by an order dated 18.09.2017 in Criminal Application No. 686 of 2017 released the applicant on bail

for a period of 2 months for undergoing a surgery for removal of implants. On 5th April, 2018, this Court (Coram: A.S. Gadkari, J.) enlarged the co-accused Sajan Joseph on bail as there was no likelihood of appeal being heard in near future.

5. Heard the learned Counsel for the applicant. It is contended that this is a third application for bail. The applicant has undergone more than 50% of the sentences awarded. My attention is drawn by the learned Counsel for the applicant that bail granted to the co-accused namely, Sajan Joseph by this Court on 05.04.2018 by suspending the substantive sentence, has not been challenged by the C.B.I. in the Hon'ble Supreme Court and, therefore, it has attained finality and as such this applicant also, on the ground of parity be released on bail.

6. It is a matter of record that the Hon'ble Supreme Court dismissed a Special Leave Petition being SLP No. 37347 of 2018 preferred by the main accused Anthony @ Soni Abraham by order dated 29.10.2018 thereby refusing to interfere with an order passed by this High Court, rejecting his application for bail *inter alia*

directing this Court to dispose of the appeal preferably within a period of 6 months from the passing of the order in view of the fact that the petitioner had undergone 3 years and 6 months of sentence. It is contended that the prime accused hereby has already undergone more than 60% of the sentence. In such circumstances, according to the learned Counsel the possibility of hearing the appeal in near future is remote and, therefore, prayed for his release.

7. Per contra, Shri. Venegaonkar, learned Special Public Prosecutor strenuously objected release of the applicant on bail pending the appeal by pointing out the fact that the order passed by this Court on 05.04.2018 qua accused Sajan Joseph could not be of any help to the applicant in view of the fact that on 5th April, 2018, the order of the Hon'ble Supreme Court in SLP No. 37347 of 2018 dated 29.10.2018 was subsequent to the order dated 05.04.2018 passed by this Court. This was in respect of only the principal offender namely, Anthony @ Soni S. Abraham. Mr. Venegaonkar, drew my attention to an order dated passed by this Court on 14.02.2017 (Coram : A.M. Badar, J.) in Criminal Application No. 44 of 2017 wherein the learned Judge specifically observed as to how

the prayer of the applicant including the rest of the accused came to be rejected. In light of the observations made in the said order, it is contended that this order would not be of any assistance to the applicant in relying upon the order passed on 5th April, 2018 (Coram: A.S. Gadkari, J.). It is contended that even in the Special Leave Petition, the Hon'ble Supreme Court has directed expediting the appeal but no relief of 50% was granted. He argued that the applicant shall have to approach the Hon'ble Supreme Court and not this Court as the remedy lies there.

8. After hearing the learned Counsel for the applicant and the learned Special Public Prosecutor, the argument of the learned Special Public Prosecutor needs to be accepted in view of the fact that the only option available to the applicant is to approach the Hon'ble Supreme Court. In view of an order passed by that Court on 29.10.2018 declining to interfere with the order of this Court dated 14.02.2017 (Coram : A.M. Badar), the learned Judge had rejected all the applications of bail preferred by the applicant and rest of the accused. There is no question of extending the benefit of parity to the applicant in view of release of accused Sajan Joseph as it was an

order passed by this Court on 05.04.2018 (Coram : A.S. Gadkari,J.).

9. One more important aspect which needs to be taken note of is that the present application is moved for suspension of conviction and sentence which cannot be granted, rather conviction cannot be legally suspended, pending the appeal. The application deserves to be rejected on that ground also.

10. In view of the averment in para 10, this application is not on merits, but only on the ground of change of circumstances. Thus, merits need not be gone into.

11. For the reasons aforesaid, the application deserves to be rejected and hence it stands rejected.

(PRITHVIRAJ K. CHAVAN, J.)