

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

CRIMINAL APPEAL NO. 253/2020

Abhijit J. Choudhari
..VS..
State of Maharashtra

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

Court's or Judge's orders

Shri D.V. Chauhan, Advocate for the appellant
Shri M.J. Khan, APP for the respondent

CORAM : Z.A.HAQ & AVINASH G. GHAROTE, JJ.
DATED : 21/08/2020

1] Heard learned advocate for the appellant and
learned APP for the respondent – State.

2] The appellant is facing trial for the offences
punishable under Sections 406, 409, 420, 506 and 120-B of
the Indian Penal Code and Section 3 of the Maharashtra
Protection of Interest of Depositors (in Financial
Establishments) Act, 1999. Undisputedly, the trial has
commenced and about 16 witnesses are examined. The
appellant had moved an application before the Sessions Court
under Section 436A of the Code of Criminal Procedure
praying that the respondent be directed to release him on bail
as he had been in prison for more than one-half of the
maximum period of imprisonment specified for the offences
alleged to have been committed by him. Learned Sessions
Judge has rejected the application filed by the appellant.
Being aggrieved by the order of learned Sessions Judge, the
appellant has filed this appeal.

3] At the time of hearing, learned APP pointed out that the charge for the offence punishable under Section 409 of the Indian Penal Code is also framed against the appellant. The punishment for the offence punishable under Section 409 of the Indian Penal Code is imprisonment for life or imprisonment of either description for a term which may extend to 10 years and also fine.

4] According to the appellant, he had been in prison for more than 5 years and 11 months at the time of filing of the application before the Sessions Court and now it is more than 6 years. Even then, if the appellant is facing trial on the charge of commission of the offence punishable under Section 409 of the Indian Penal Code, it cannot be said that the appellant has undergone detention for period extending upto one-half of the maximum period of imprisonment specified for Section 409 of the Indian Penal Code.

5] Learned advocate for the appellant has fairly pointed out the notification issued by the Government of India, Ministry of Home Affairs (CS Division) on 27/09/2014 which lays down that in cases where the maximum punishment for offence is life imprisonment, as per Section 57 of the Indian Penal Code, it should be 20 years for which one-half of the maximum period of imprisonment would be 10 years for the purposes of Section 436A of the Code of Criminal Procedure.

6] Learned APP submitted that as per the law laid down by the Hon'ble Supreme Court if the punishment

prescribed for the offence is life imprisonment, then it will have to be treated as imprisonment for natural life of the convict.

7] Be that as it may, at this stage, we are not required to go into this issue as the appellant has not completed even 10 years of detention. Hence, leaving this issue open for consideration at appropriate stage, we hold that at this stage the appellant is not eligible and entitled for the benefit of Section 436A of the Code of Criminal Procedure. We find that the learned Sessions Judge has not committed any error by rejecting the application filed by the appellant under Section 436A of the Code of Criminal Procedure.

8] Hence, the appeal is **dismissed**.

JUDGE

JUDGE