

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

CRIMINAL APPLICATION [APPA] NO. 512 OF 2020
IN CRIMINAL APPEAL NO. 487/2020.

Madhav Yashwant Pawar

-VERSUS-

State of Maharashtra

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

Court's or Judge's Orders

Shri D.V. Chauhan, Advocate for the Applicant/Appellant.
Shri A. Kadukar, A.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 14, 2020.

Heard.

2. This is an application for suspension of execution of sentence in terms of Section 389[1] of the Code of Criminal Procedure. The applicant/accused is convicted by the Special Court in MPID Case No.5/2016 vide judgment and order dated 31.10.2020. The appellant / accused was convicted for the offence punishable under Section 420, 468, 406 r/w 120B r/w 34 of the Indian

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Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments Act, 1999 r/w 120B r/w 34 of the Indian Penal Code, and Sections 45S, 58B[5A] of the Reserve Bank of India Act r/w 120B r/w 34 of the Indian Penal Code. The trial Court though awarded different punishment for each section, however, the maximum punishment imposed is to undergo rigorous imprisonment for 6 years and total fine of Rs. 1,26,000/- with default clause has been imposed.

3. The learned counsel for the applicant/appellant would submit that almost the accused has undergone 5 years and 9 months of imprisonment, since he was under trial prisoner from 14.03.2015. According to him, if the execution of substantive sentence has not been suspended, the very purpose of filing the appeal would be frustrated. He would submit that due to poor financial condition, the appellant was not able to deposit the fine amount. In this regard he

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has attracted my attention to a decision of the Hon'ble Supreme Court in case of **Satyendra Kumar Mehra .vrs. State of Jharkhand – (2018) 15 SCC 139**, particularly to paragraph no.36 of the judgment wherein it is expressed that the Appellate Court can also suspend the sentence of imprisonment as well as of fine.

4. Learned A.P.P. has strongly resisted this application by pointing towards the seriousness of the offence and involvement of money of common man.

5. Certainly, the appeal may not come up for hearing for next few months i.e. upto the entire term of sentence. In that case, an irreversible position would occur as the entire sentence of imprisonment as well as default imprisonment would also be served by the accused before decision of appeal on merit. Though the appellant is convicted by the trial Court, however, it is brought to the notice that there are arguable points on merits, and according to the appellant,

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he has fair chances of success.

6. It is one of the submission that since the appellant is in jail for longer period, his family is fighting for survival and even unable to arrange for the fine amount to deposit in the Court. The submission that if the appellant is enlarged on bail on suspension, he would be in a position to pay fine amount bears substance.

7. Primely, as the appellant has served almost entire sentence, except three months. It is a case where the Court can use judicial discretion to suspend the execution of sentence. On calculation, total default sentence would be near about 1 year 1 month and 15 days. Certainly if within stipulated period appellant fails to deposit fine amount then suspension stands revoked. Having regard to all these facts, following order is passed.

- (i) Execution of substantive sentence passed in MPID Case No.5/2016 by the Sessions Judge, Nagpur on 31.10.2020,

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is hereby suspended during the pendency of this appeal on the condition that the appellant shall deposit 50% of the fine amount within a period of four weeks from the date of his release and rest of the amount within a period of next four weeks. Needless to mention that the appellant/applicant can deposit the entire fine amount at any time before the stipulated time limit.

- (ii) In the meantime, the applicant /appellant be released on bail on his furnishing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iii) Criminal Application is accordingly disposed of.

JUDGE

Rgd.