

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2311 OF 2021 IN APEAL/494/2021

SUNIL ANNARAO WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. G. K. Naik Thigle
APP for Respondent-State : Ms. R. P. Gaur
...

CORAM : N. R. BORKAR, J.

DATE : 25-10-2021

PER COURT :-

This is an application for suspension of substantive sentence and to release the applicant on bail.

2. The applicant came to be convicted for the offence under Section 7 of the Prevention of Corruption Act, 1988 (in short, "the Act"), and sentenced to suffer Rigorous Imprisonment (RI) for one year and to pay fine of Rs.1,000/- in default to suffer further RI for one month. He is also convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act and sentenced to suffer RI for three years and to pay fine of Rs.1000/- in default to suffer further RI for one month.

3. Heard learned counsel for the applicant and learned APP for the respondent-State.

4. Learned counsel for the applicant-accused submits that there is delay in lodging report. It is further submitted that, according to the prosecution, complainant lodged the complaint on 11-04-2012, however, PW-4 Suresh Wankhede, investigating officer has admitted that on 10-04-2012, the Superintendent of Police, ACB, Aurangabad deputed him for the purpose of conducting raid in the present matter at Beed. It is submitted that prosecution has not led any evidence in relation to initial demand. It is submitted that the trial Court lost sight of these facts and arrived at the wrong findings. It is submitted that considering these facts and circumstances, substantive sentence may be suspended and the applicant be released on bail.

5. On the other hand, learned APP for the respondent-State submitted that the applicant-accused is convicted for the serious offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. It is submitted that learned trial Court, on the basis of evidence on record, has held that the applicant-accused demanded and accepted the bribe amount from the complainant. It is further submitted that considering the nature of offence, the substantive sentence may not be suspended and applicant may not be released on bail.

6. It is prosecution's own case that demand of bribe was made prior to about 15 days of the lodging the FIR / complaint. Apart from it, admittedly, the complaint was lodged on 11-04-2012. However, PW-4 Suresh Wankhede, the Investigating Officer has admitted that on 10-04-2012, the Superintendent of Police, ACB, Aurangabad directed and deputed him to conduct the raid in the present matter at Beed. If the complaint was lodged on 11-04-2012, then it is not understood as to how the directions were issued on 10-04-2012. Considering these facts and circumstances, I am, therefore, inclined to suspend the substantive sentence and release the applicant on bail. Hence, the order -

ORDER

- (i) Criminal application is allowed.
- (ii) The substantive sentence awarded to the applicant vide Judgment and order dated 09-09-2021 passed by the learned Special and Sessions Judge, Beed, in Special (ACB) Case No. 6 of 2012, is hereby suspended. The applicant be released on bail on furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
- (iii) Bail before the Trial Court.

(N. R. BORKAR)
JUDGE