

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

**INTERIM APPLICATION NO.1542 OF 2021
IN
CRIMINAL APPEAL NO.489 OF 2020**

Mohan Arjun Keswani .. Applicant/ Appellant

Versus

State of Maharashtra .. Respondent

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Mr.Dilip B. Shinde i/b. M/s.Deepak Paikrao & Associates,
Advocate for the Applicant/Appellant.

Mr.R.M. Pethe, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 10, 2021.

P.C. :

This is an application for suspension of sentence of imprisonment imposed vide judgment and order dated 10th December, 2020, passed by the Special Judge Kolhapur in M.P.I.D. Case No.1 of 2013.

2 The applicant is convicted for the offence punishable under Section 420 read with 34 of Indian Penal Code (IPC”, for short) and sentenced to undergo rigorous imprisonment for seven

years and to pay fine of Rs.5,000/-. He is also convicted for the offence punishable under Section 120-B of IPC, and, sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.5,000/-. He is further convicted for the offence punishable under Section 3 of M.P.I.D. Act, and, sentenced to undergo rigorous imprisonment for six years with fine of Rs.1,00,000/-. He is also convicted for offence under Sections 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, and, sentenced to suffer rigorous imprisonment for three years and two years, respectively, and, to pay fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment for three months. All the sentences were run concurrently.

3 This is second application for suspension of sentence. The previous application was rejected by the Division Bench of this Court vide order dated 22nd December, 2020. The Appeal challenging the same judgment preferred by accused no.3 Bhupsing Surgyansing viz. Criminal Appeal No.125 of 2021, was listed before learned Single Judge and the said Appeal was admitted on 11th February, 2021. The application for suspension of sentence and bail was also heard on the same day and the said application was allowed. While allowing said application, it was observed that, the applicant therein was on bail pending trial. He

has not misused liberty granted to him. He has deposited the fine amount. The sentence awarded is short term sentence. Thereafter, the co-accused Anand Shivram Tambe (accused no.2) who has been convicted and sentenced alongwith the applicant had preferred application for suspension of sentence and grant of bail. The said application was listed before the Single Judge of this Court. The application was allowed vide order dated 7th May, 2021, and, the sentence of imprisonment was suspended and the applicant therein was directed to be released on bail. Learned Single Judge has noted that the said applicant was on bail during the trial and he has not misused the liberty granted to him. He has deposited the fine amount awarded by the Court. The sentence awarded is a short sentence. It is pertinent to note that the present applicant and the co-accused were convicted and sentenced for the same offences.

4 Learned advocate for the applicant contended that in view of change in circumstances, that the accused no.2 Anand Shivram Tambe and accused no.3 Bhupsingh Surgayansing were granted bail by single Judge of this Court by suspending sentence of imprisonment. The applicant has preferred this application for suspension of sentence and grant of bail. The other convicted

accused are at liberty. It is contended that the Appeal preferred by the applicant and the application for suspension of sentence was wrongly circulated before the Division Bench. The applicant has deposited fine amount of Rs.1,21,000/-. The Appeal would not be listed for hearing shortly. The other accused were granted bail, after rejection of application for suspension and grant of bail preferred by applicant was rejected. The applicant claims parity.

5 The Appeal preferred by applicant was listed before learned Division Bench and vide order dated 8th June, 2021, office was directed to place Appeal before appropriate Court. From the said order, it appeared that the present application for suspension of sentence was not listed before the Court and it was not pointed out to the Court that the applicant is seeking suspension of sentence in view of change in circumstances and that his previous application was rejected by the Division Bench. Subsequently, this application was listed before the learned Single Judge of this Court, and, vide order dated 21st June, 2021, it was observed that vide order dated 8th June, 2021, passed by the Division Bench, the Court had taken note of the fact that the sentence imposed on the applicant alongwith co-accused was seven years and the Appeal will have to be heard before appropriate Bench (Single Judge) considering the sentences

awarded and in view of that the Appeal is listed before the Single Judge. It was further observed that the Appeal was admitted by the Division Bench on 22nd December, 2020, and, application for grant of bail was heard on merits and rejected, by recording that there is prima facie material against the applicant. The difficulty posed by the applicant is that his application is rejected by the Division Bench and can always be heard by a Division Bench and orders can be passed but not *vice-a-versa*. If the applicant is desirous of taking appropriate steps, he is permitted to do so. The matter was thereafter listed before the Division Bench on 22nd June, 2021. The advocate for the applicant was absent. The Division Bench proceeded to pass order that the praecipe was filed for withdrawal of the appeal. The praecipe is vague as to the date of circulation of appeal. In the opening part of the praecipe, it is stated that the appeal be circulated before Court on 24th June, 2021, whereas, in the concluding part of the praecipe, it is stated that the above mentioned matter be circulated for withdrawal before Court on 22nd June, 2021. None appeared for the appellant and there is a detailed order passed by Court on 8th June, 2021, directing the office to place the appeal before appropriate Court/bench. Hence, no further order is required to be passed in the matter.

6 This Court by order dated 23rd July, 2021, made reference to the previous orders passed by the Division Bench as well as by the learned Single Judge dated 21st June, 2021, and, directed Registry to take appropriate directions for placing this application before the Division Bench.

7 Subsequently, the application for suspension of sentence and the appeal challenging the judgment of conviction were listed before the learned Division Bench and vide order dated 5th August, 2021, the learned Division Bench had made reference to previous orders as well as the order passed by this Court dated 23rd July, 2021, and, directed that the matter pertains to Single Judge and considering the fact that the appeal filed by co-accused were placed before the learned Single Judge and certain orders are passed on the applications by the learned Single Judge, Registry was directed to place the present application along with the Appeal before the learned Single Judge of this Court for passing appropriate orders. The Court also observed that the application filed by the applicant for suspension of sentence and grant of bail would be considered by the learned Single Judge on its own merits. In this circumstances, the application and the appeal is listed before this Court.

8 It is pertinent to note that application of accused no.2 Anand Shivram Tambe and accused No.3 Bhupsing Surgyansing who were convicted for the same offence with similar sentences were directed to be released on bail by learned Single Judge on suspending the sentence imposed by the judgment of conviction. Both the orders were passed after the application for suspension of sentence preferred by the applicant was rejected by the learned Division Bench of this Court. Learned advocate for the applicant submitted that the applicant is entitled for release on the ground of parity. The appeal may not come for hearing immediately. The trial Court has not appreciated evidence properly. The trial Court has wrongly come to the conclusion that the applicant is one of the Director of the company and in fact it is a matter of record that the applicant is not the director of the company. He is only shareholder of the company. The prosecution has not produced any documents or material in the form of evidence to show that the applicant is director of M/s.Shine Multitrade India Private Limited nor there is evidence to show that the applicant is responsible for day to day affairs and conduct of business of the said company. P.W.1 has not identified the applicant before the Court. Learned counsel for the applicant drew my attention to the observations of the trial Court. In

paragraph no.5 of the impugned judgment of conviction it is stated that the applicant (accused no.5) is the director of the company. Learned counsel for the applicant drew my attention to the documents, which were exhibited in evidence, and, contended that the documents does not disclose that the applicant is the director of the company.

9 It is pertinent to note that the trial Court has convicted three persons, two of them had preferred application for suspension of sentence. The learned Single Judge has suspended the sentence and granted bail to the said accused. Applicant has strongly relied upon the said orders and claimed parity. While suspending the sentence, this Court has considered the fact that the accused were on bail during the trial and that the fine amount is deposited. The sentence is short term sentence. It is the case of applicant that he was on bail during trial. He has deposited fine amount. There is change in circumstance, after rejection of previous application for suspension of sentence. Out of the three accused who were convicted, including applicant, two of them are granted bail by suspending sentence of imprisonment. Considering all these circumstances, the sentence of imprisonment awarded against the applicant can be suspended.

:: ORDER ::

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 10th February, 2020, passed by the Special Judge, Kolhapur in M.P.I.D. Case No.1 of 2013, is suspended during pendency of Criminal Appeal No.498 of 2020, preferred by applicant and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/-, with one or more solvent sureties in the like amount;
- (iii) Applicant is permitted to furnish provisional cash bail in the sum of Rs.50,000/-, for a period of eight weeks, in lieu of sureties;
- (iv) Applicant shall report trial Court once in three months on the days specified by the trial Court, till final disposal of criminal Appeal;
- (v) Applicant shall keep informed trial Court about his present residential address and mobile number from time to time;

- (vi) After two consecutive default in appearing before the trial Court, the learned Judge shall make a report to the High Court and prosecution would be at liberty to file application seeking cancellation of bail.

(PRAKASH D. NAIK, J.)