(VIA VIDEO-CONFERENCING)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 07.09.2021
% **Pronounced on : 09.11.2021**

\+ **CRL.A. 125/2021**

NEERAJ KHATRI ..... Appellant

Through: Mr. Harsh K. Sharma and Ms. Vaibhavi Sharma, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Nikhil Goel, SPP with Mr. Vinay Mathew, Adv.

\+ **CRL.A. 149/2021**

S.VAIKUNDARAJAN ..... Appellant

Through: Mr. Pramod Kr. Dubey, Sr. Adv. with Mr. Shivam Luthra, Adv. and Ms. Shivani Luthra, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Nikhil Goel, SPP with Mr. Vinay Mathew, Adv. for CBI.

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Mr. Beno Bencigar and Mr.Rajiv Mishra, Advs. For applicant/intervenor.

+ **CRL.A. 118/2021**

SUBBULAKSHMI ..... Appellant

Through: Mr. S.Nandakumar, Mr. Azhar Qayum, Ms. Deepika Nandakumar and Mr. M.S.Saran, Advs.

versus

CBI ..... Respondent

Through: Mr. Nikhil Goel, SPP with Mr. Vinay Mathew, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

CRL.A. 125/2021 & CRL. A. 118/2021

Heard.

Admit.

List in due course in the category of 'Regular Matters' as per the year of its seniority.

CRL.M.A 6842/2021 (for intervention) in CRL.A 149/2021

Dismissed as withdrawn.

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CRL.M.(BAIL) 282/2021 in CRL.A. 125/2021
CRL.M.(BAIL) 358/2021 in CRL.A. 149/2021
CRL.M.(BAIL) 258/2021 in CRL.A. 118/2021

1. The present applications have been filed by the appellants under Section 389 (1) read with Section 482 Cr.P.C. for suspension of sentence during the pendency of the appeal.

2. The gist of the cases is that the FIR in the present cases was lodged on 01.03.2016 based on a source information. It showed that Neeraj Khatri, who, at the relevant time, was posted as Dy. Director (Scientist-C) in Ministry of Environment, Forest (MoEF) Govt. of India and accepted a bribe of Rs.4,13,000/- which was in form of bank draft (bearing no.557534 dated 03.07.2012) in favour of VIT University, Vellore, Tamil Nadu made at the instance of S. Vaikundarajan, (Managing Partner of M/s V.V.Minerals) from the accounts of M/s V.V.Minerals, Chennai. It is disclosed that an application for environment clearance of M/s V.V.Minerals was pending in Ministry of Environment and Forest, where Neeraj Khatri was Dy. Director. It is stated that the expenditure for the demand draft of Rs.4,15,000/- (including commission) is shown in books of account of M/s V.V.Minerals on 05.07.2012 as “donation MoEF Officer Chennai payment”.

3. It is submitted by the counsels for the appellants that appellants were on bail during the entire period of about 5 years since the day of filing of the FIR/RC including the period of trial and have never misused the privilege granted to them. They further submitted that the fine which was imposed

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vide the order on sentence has already been paid by appellants S. Vaikundarajan and Subbulakshmi. However, it is submitted by the counsel for the appellant Neeraj Khatri that fine will be paid today itself.

4. It is submitted by the counsels for the appellants that learned Special judge presumed the facts which were not available on records in order to convict the appellants. They further submitted that while convicting, the learned Special Judge did not deal with the specific grounds consisting issues of law and facts, which was argued before the court. It is further submitted that none of the prosecution witness claimed that they have witnessed any "demand of money" defined as per the provisions of Prevention of Corruptions Act. It is further submitted that the Learned Trial Court has failed to appreciate that the prosecution has failed to prove its case beyond reasonable doubt that Neeraj Khatri demanded and accepted an amount of Rs.4,13,000/- as illegal gratification from S. Vaikundarajan, the Managing Partner of M/s V.V. Minerals, Chennai at the time when an application for environmental clearance of his firm was pending before the MoEF, where Neeraj Khatri was a Dy. Director. It is further submitted that it is well settled position that proper proof of demand as well as acceptance is a *sine qua non* to record a conviction under Sections 7 and 13 of the PC Act.

5. Learned counsels for the appellants further submitted that the impugned judgement is based on an incorrect interpretation of the legal provisions and a misreading of the evidence. It is also submitted that the conviction is not sustainable in the eyes of the law and is liable to be set

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aside and prays that the sentences of the appellants be suspended till the disposal of the appeal.

6. Learned counsel for the appellants relied upon the judgments in the cases of ***Bhagwan Rama Sinde Gosai & Ors. V. State of Gujrat (1999) 4 SCC 421*** and ***Angana & Ors. V. State of Rajasthan (2009) 3 SCC 767.***

7. On the other hand, Learned SPP appearing on behalf of CBI vehemently opposed the suspension of sentence applications and submitted that the appellants have been convicted for a serious white-collar crime, and they have not spent any time in custody. It is further submitted that the prayer for suspension of sentence is not supported with any substantial ground whatsoever. It is further submitted that the appellant Neeraj Khatri is a habitual offender, as he has been previously convicted for the offences under Prevention of Corruption Act, 1988. It is further submitted that in such factual background of this case, the appellants have not made out any grounds to be released, pending adjudication of the appeal. It is submitted that the appellants are now convicted and they no longer have the presumption of innocence in their favour. It is further submitted that appellants have failed to bring on record any exceptional circumstance warranting suspension of sentence.

8. In the instant case, Appellant-**Neeraj Khatri** has been convicted for the offences under Section 13(2) read with Section 13(1)(d) of P.C. Act and sentenced to undergo Rigorous Imprisonment for 5 years and further sentenced to undergo one year of RI for the offences punishable under

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Section 120-B IPC read with Section 7,11,12 of P.C. Act along with fine of Rs.5,00,000/- and both the sentence to run concurrently.

9. In the present case, the trial has ended and when suspension of sentence is stayed under Section 389(1) Cr.P.C, the court has to be cognizant of the fact that finding of guilt has been arrived at while convicting the appellant. The trial court had noted that the demand draft was in the name of VIT University, in which the admission of son of the appellant-Neeraj Khatri was to be secured. The trial court has also noted that the appellant-Neeraj Khatri has accepted and demanded Rs.4,13,000/-, and this money was paid in the form of demand draft to VIT University. One important factor is that the appellant has been convicted in another FIR under Section 120-B read with Sections 7, 11, 12, 13(2) read with Section 13(1)(d) of P.C. Act and Section 12 of P.C. Act and had been sentenced to undergo RI for three years with fine of Rs.50,000/-. The trial court while arriving at the conclusion of guilt of the appellant has also observed that appellant has obtained valuable things namely air-tickets for himself and his son from Delhi to Chennai which had formed the part of transaction, the ticketing was done by appellant S. Vaikundarajan through Subbulakshmi so that the environment clearance which was required by the appellant S. Vaikundarajan would be expedited.

10. In the instant case, I will refer to the decision of Division Bench of Supreme Court in ***Preet Pal Singh V. State of Uttar Pradesh (2020) 8 SCC 645*** where it has been observed as under:

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> "35. There is a difference between grant of bail under Section 439 of the Cr PC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra). However, in case of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."

11. At this stage, the question is as to whether a case of suspension of sentence has been made out or not in the facts and circumstances of this case and the same shall not affect the merits of the case when the appeal comes up for final hearing. Therefore, on the basis of the material which has emerged before the learned Special Judge which formed the basis of the order of conviction, and the fact that the appellant is a previous convict in an FIR where he has been convicted under Section 120-B read with Sections 7, 11, 12, 13(2) read with Section 13(1)(d) of P.C. Act and Section 12 of P.C

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Act and had been sentenced to undergo RI for three years with fine of Rs.50,000/-, the application seeking suspension of sentence of Appellant-Neeraj Khatri is dismissed and he shall surrender to the sentence within two days from the date of this order.

12. As far as Appellant- **S. Vaikundarajan** is concerned, he has been convicted for the offences under Section 12 P.C. Act and sentenced to undergo Rigorous Imprisonment for 3 years and further sentenced to undergo one year of Rigorous Imprisonment for the offences punishable under Section 120-B IPC read with Section 7, 11, 12, 13(2) read with Section 13(1)(d) P.C. Act along with fine of Rs.5,00,000/- and both the sentences shall run concurrently.

13. It is pertinent to mention here that PW-25, being the clerk at company (M/s V.V. Minerals company of which the appellant S. Vaikundarajan is the Managing Partner) deposed that the appellant herein directed the witness to get a Demand Draft prepared of Rs.4,13,000/- in favour of VIT University, for which purpose, this witness was provided Rs. 4,15,000/- in cash. It is submitted that this Demand Draft for Rs.4,13,000/- was for the purpose of the admission of the son of the appellant-Neeraj Khatri in the aforementioned university. This admission fee paid by the appellant's company was a *quid pro quo* for grant of favourable recommendations of the proposal submitted by the appellant's company, pending in the Ministry of Environment and Forests. Neeraj Khatri and his son were even flown on

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the expenses of M/s V.V. Minerals, on the instructions of the appellant herein.

14. Further, it was admitted by the appellant- S. Vaikundarajan in his defence before the trial court that the amount of Rs.4,15,000/-, transferred to accounts of VIT University by way of Demand Draft of Rs.4,13,000/-, was in fact shown in the books of accounts as "Donation". This fact was further strengthened with the testimony of PW-19 being the accounts manager of the company M/s V.V. Minerals. The same is also fortified by the testimony of PW-22, the Income Tax official, who disallowed the claim for exemption made by the company M/s V.V. Minerals.

15. It was controverted from the testimony of PW-18, being the employee of the company M/s V.V. Minerals, that he was provided cash of Rs.4,15,000/- by PW-25 (Manager of M/s V.V. Minerals). This cash was then deposited by this witness in his own account, and was withdrawn in the form of a DD in favour of VIT University, Chennai.

16. It is also concluded by the trial court that the appellant S. Vaikundarajan, through his company M/s V.V. Minerals being accused, actively tried to conceal the payment of Rs.4,13,000/- through a circuitous route to accused Neeraj Khatri, the government official. The trial court has also concluded that the prosecution was successful in establishing that the accused-Neeraj Khatri (government servant) and his son were flown to VIT University, at the direction of the appellant herein, through appellant

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Subbulakshmi. The return tickets of the aforementioned individuals were also booked by appellant Subbulakshmi.

17. The trial court has further concluded that it had been established that appellant Neeraj Khatri, Government servant had obtained illegal pecuniary consideration from appellant S Vaikundarajan, for expediting environmental clearance for the proposal submitted by M/s V.V. Minerals Company (of which the appellant herein was the managing partner).

18. It is submitted by the learned senior counsel for the appellant that the prosecution has failed to prove its case beyond reasonable doubt that Neeraj Khatri demanded and accepted an amount of Rs.4,13,000/- as illegal gratification from the Appellant as the Managing Partner of M/s VV Minerals. It is further submitted that there was absence of any demand for money made by Neeraj Khatri from the Appellant, either directly or through any Person. It is further submitted by him that the Learned Trial Court has made assumptions and inferences to conclude that there was a demand for bribe by Neeraj Khatri, which was allegedly fulfilled by the Appellant / M/s VV Minerals through Subbulakshmi without taking into account the statement of the Appellant under Section 315 Cr.P.C. containing the details of the loan transaction between the Appellant and Neeraj Khatri. It is submitted that it was clearly established during the trial that when Appellant gave a loan to Neeraj Khatri, i.e. on 03.07.2012, there was no pending application of M/s VV Minerals, Chennai before MoEF contrary to the false allegations made by the prosecution. It is further submitted that

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Respondent/CBI deliberately did not investigate into the factum of the return of the loan amount and PW-5 has clearly stated that the factum of the return of the money was conveyed to the Respondent CBI as the same not inquired into by the Respondent agency at the time of the investigation. It is submitted by the learned senior counsel for the appellant that Neeraj Khatri was in no position to provide any undue advantage to the Appellant. It is further submitted that Learned Trial Court erroneously overlooked that the amount of Rs. 4,15,000/- was voluntarily disallowed by M/s V.V. Minerals since donation is not an allowable business expenditure and was added back to the taxable income of the firm. M/s VV Minerals duly paid tax on the said amount.

19. In the instant case, appellant **S. Vaikundarajan** has clean past antecedents, and he has been sentenced for a maximum period of RI for 3 years. The fine has already been deposited by the appellant. Therefore, keeping in view the facts and circumstances of the case, and the fact that the appeal is not likely to be heard in the near future, the sentence of the appellant S. Vaikundarajan awarded by the trial court vide order dated 22.02.2021 is suspended till the disposal of the appeal and he is admitted to bail on his furnishing personal bond in sum of Rs.50,000/- with one surety of like amount subject to the satisfaction of learned Trial Court concerned.

20. The appellant shall not indulge in any illegal activities and he shall not leave the India without the prior permission of the court below.

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21. The appellant shall remain present at the time of hearing of the appeal.

22. Now coming to the case of appellant- **Subbulakshmi**, she has been convicted for the offences under Section 12 P.C. Act and sentenced to undergo Rigorous Imprisonment for 3 years and further sentenced to undergo one year of Rigorous Imprisonment for the offences punishable under Section 120-B IPC read with Section 7, 11, 12, 13(2) read with Section 13(1)(d) P.C. Act along with fine of Rs.2,00,000/- and both the sentences shall run concurrently.

23. It is relevant to note here that PW-11, was the travel agent through whom the appellant booked air tickets to Vellore for Accused No. 1, public servant and his son.

24. PW-25 deposed that the DD for an amount of Rs.4,13,000/- was prepared on the express instruction of the appellant herein which is to be paid to VIT University for the purpose of admission of appellant Neeraj Khatri's son in college. The appellant Subbulakshmi held the position of Liaison Officer in M/S V.V. Minerals Company, for getting approvals from various ministries and government agencies.

25. Further, it was the admitted by the appellant herein at the time of defence that the impugned DD was prepared on her instruction, and that air tickets for the benefit of appellant Neeraj Khatri and his son were in fact booked by her. On the basis of the evidence on record, the appellant was found to have entered into a criminal conspiracy to obtain approval for then

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pending proposal of M/S V.V. Minerals Company, by bribing a public servant.

26. It is submitted by the learned counsel for the appellant that learned special judge presumed certain facts which are not available on record. It is further submitted that the sanction is illegal and without any application of mind PW-14 deposed that appellant was posted as Director, Impact Assessment Division. It is further submitted that there is no connection direct or indirect produced by the prosecution to establish that the said DD was given in anticipation of grant of clearance in future. It is also submitted by him that prosecution has not produced any document to show that the appellant was Liaison Officer during the said period. It is submitted that appellant was running media company to produce TV programs and commercial advertising. It is further submitted that appellant has been roped with the aid of Section 120B and Section 12 P.C. Act. It is submitted that appellant is only 10th pass and is never in any position to assist or abet the commission of crime also prosecution has fabricated the evidence against the appellant and made her scapegoat.

27. In the instant case, appellant **Subbulakshmi** has clean past antecedents, and she has been sentenced for a maximum period of RI for 3 years. The fine has already been deposited by the appellant. Therefore, keeping in view the facts and circumstances of the case and the fact that the appeal is not likely to be heard in the near future, the sentence of the appellant-Subbulakshmi awarded by the trial court vide order dated 22.02.2021 is suspended till the disposal of the appeal and she is admitted to

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bail on her furnishing personal bond in sum of Rs.50,000/- with one surety in the like amount subject to the satisfaction of learned Trial Court concerned.

28. The appellant shall not indulge in any illegal activities and she shall not leave the India without the prior permission of the court below.

29. The appellant shall remain present at the time of hearing of the appeal.

30. At this stage, all the contentions raised by the counsels for the appellants touching the merits of the case cannot be considered or analysed in depth and shall be dealt with when the appeal comes up for final hearing.

31. A copy of this order shall be electronically transmitted to the concerned trial court immediately.

32. Now, list for arguments with regard to prayer for stay of conviction made by appellant- S. Vaikundarajan in Crl. M. (Bail) No. 358/2021 in Crl. Appeal 149/2021 on 13th January, 2022.

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RAJNISH BHATNAGAR, J

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