

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

**INTERIM APPLICATION NO. 746 OF 2022
IN
CRIMINAL APPEAL NO. 222 OF 2022**

Ashok Leharchand Bhansali ...Applicant/Appellant
Versus
Central Bureau Of Investigation And Anr. ...Respondents

**ALONG WITH
INTERIM APPLICATION NO. 745 OF 2022
IN
CRIMINAL APPEAL NO. 222 OF 2022**

Ashok Leharchand Bhansali ...Applicant/Appellant
Versus
Central Bureau Of Investigation And Anr. ...Respondent

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Mr. Vinay J. Bhanushali, Advocate for the Applicant/Appellant.

Mr. Kuldeep Patil, Advocate for Respondent – CBI.

Mrs. P. N. Dabholkar, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 14th MARCH, 2022.**

PER COURT:

1. In both these applications the applicant has prayed for suspension of sentence and grant of bail pending Criminal Appeal No.222 of of 2022.

2. The applicant is convicted vide judgment and order dated 23rd February, 2022 for offence punishable under Section 120 -B of Indian Penal Code (for short “IPC”) and sentenced to

suffer rigorous imprisonment for two years and to pay fine of Rs.50,000/-. He is also convicted for offence under Section 420 r/w Section 120-B of IPC and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.3,00,00,000/-. For the conviction under Sections 465 of IPC, 468 of IPC and 471 of IPC, the applicant has been sentenced to suffer imprisonment of one year on each count and fine of Rs.1,00,000/- on each count.

3. Learned counsel for the applicant submitted as follows:-

- i.** The applicant was on bail during the trial. The facility of bail was not misused.
- ii.** The evidence adduced in the trial Court suffers from serious discrepancies.
- iii.** The prosecution has not produced on record the documents to support its case.
- iv.** The trial Court has not assigned any reasons for imposing fine of Rs.3,00,00,000/- for conviction under Section 420 r/w Section 120-B of IPC. The record is 20 years old and on inferences huge fine has been imposed.
- v.** The evidence of PW-10 refers to the misappropriation of about 78 Lacks which is not fortified by any documentary

evidence.

vi. The maximum sentence of imprisonment imposed by the trial Court is of 5 years. The appeal preferred by the applicant would not come up for hearing within short span of time and in the event the sentence is not suspended, the appeal would become infructuous.

vii. Relying upon the income tax returns of the applicant it is urged that the financial capacity of the applicant not sound to deposit the huge fine amount.

viii. The sentence of imprisonment as well as fine can be suspended. The fine amount can be reduced.

ix. The fine amount imposed for conviction other than for offence under Section 420 of IPC Rs.3,50,000/-. The applicant would deposit the said amount within reasonable time. The fine of Rs.3,00,00,000/- is arbitrary and without supported by evidence. On instructions it is submitted that the applicant would deposit amount of Rs.5,00,000/- towards fine amount for conviction under Section 420 of IPC.

4. In support of his submissions he relied upon the following decisions :-

- (a) Satyendra Kumar Mehra Vs. State of Zharkhand (2018) 15 SCC 139.
- (b) Emperor V/s. Mendi Ali, AIR 1941 Allahbad 310.
- (c) Adamji Umar Dalal V/s. State of Bombay, AIR (39) 1952 SC 14.
- (d) Monika Acharya V/s. State of Orissa 2000(1) Orissa LR 299.
- (e) Shahejadjkhan Meheububkhan Pathan V/s. Stte of Gujrat in Criminal Appeal No.1593 of 2012.

5. learned counsel for the respondent – CBI submitted that the offences were committed about 18 years ago. The trial Court has considered this aspect while imposing fine. There is sufficient evidence to convict him. The applicant has played lead role in the crime. The evidence on record disclose that the applicant had misappropriated huge amount. The amount was utilized for several years. Hence, the trial Court had imposed fine of Rs.3,00,00,000/- for the conviction under Section 420 of IPC. He relied upon the order dated 20th December, 2021, passed by this Court in Interim Application No.2874 of 2021 wherein the accused was sentenced to pay fine of more than Ten Crores. The misappropriated amount was more than Two Crores. The convict

was permitted to deposit 50% of misappropriated amount. He also relied in order dated 4th July, 2018 passed by this Court in Criminal Application No.999 of 2018. The trial Court had imposed heavy fine on various counts in that case. Considering the nature of offence, the fine amount may not be reduced.

6. It is not disputed that the applicant was on bail during the trial. The maximum sentence imposed by the trial Court is 5 years. The sentence of fine has been imposed by the trial Court on various counts. The fine amount for the conviction under Sections 120-B, 465, 468 & 471 of IPC is in the sum of Rs.3,50,000/-, whereas the fine imposed for the conviction under Section 420 of IPC is Rs.3,00,00,000/-.

7. The applicant was arraigned as accused No.3. Accused Nos.1, 3 (applicant), 4 & 6 were convicted for the offences punishable under Section 120-B of IPC and sentenced to suffer rigorous imprisonment for two years each and fine amount of Rs.50,000/-. Accused Nos. 1 4 & 6 were convicted for the offences punishable under Section 420 r/w Section 120-B of IPC and sentenced to suffer rigorous imprisonment for three years each. Accused No.1 was sentenced to pay fine of Rs.1,00,000/-. Accused Nos. 4 & 6 were directed to pay fine of 30,00,000/- each. Accused No.3 (applicant) is convicted for offence punishable under Section

420 r/w 120-B of IPC and sentenced to suffer imprisonment of five years and fine of Rs.3,00,00,000/- Accused No.1 was convicted for offence under Section 409 of IPC and sentenced to suffer imprisonment of four years and fine of Rs.1,00,000/-. Accused No.1 is convicted for the offence punishable under Section 13(1)(d) r/s 13(2) of P.C. Act and sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.1,00,000/-. Accused No.3 (applicant), accused No.4, and accused No.6 were convicted for the offence punishable under Section 465 of IPC and sentenced to suffer imprisonment of one year and fine of Rs.1,00,000/-. Accused No.3 (applicant) is convicted for the offence punishable under Section 468 of IPC and sentenced to suffer imprisonment of one year and fine of Rs.1,00,000/-. Accused No.3 (applicant), accused Nos.4 & 6 were convicted for the offence punishable under Section 471 of IPC and sentenced to suffer imprisonment of one year and fine of Rs.1,00,000/- Accused No.3 (applicant) is acquitted for the offence under Section 467 of IPC. Accused No.3 (applicant), accused Nos.4 & 6 were acquitted under Section 409 IPC, Section 13(1)(d) r/w 13(2) of PC Act. Accused No.9 is acquitted for offences punishable under Section 120-B, 420, 409 of IPC, 13(1)(d) r/w 13(2) of PC Act. The substantive sentences to run concurrently.

8. FIR was registered on 30th May, 1998. The complaint was filed by Bank of India Jacob Circle Branch, Mumbai. The case of prosecution is that the complainant Bank was holding several bank accounts of accused. The Bank officers permitted drawings in all the accounts against uncleared instruments. Cheques were deposited in accounts and sent for clearing. The branch was permitting drawings against uncleared effects immediately and sent instruments simultaneously in clearing and invariably all the cheques were returned unpaid by drawee Bank. The account did not show TOD statement. The account did not show TOD statement. It resulted in loss of 98.28 Lakhs. The accused No.1 sanctioned loans on 7th March, 1998 and 10th March, 1998 aggregating to Rs.78,22,500/- NSC certificates pledged in accounts were not genuine. Accused entered into criminal conspiracy to cheat complainant bank.

9. The defence of accused is that, according to prosecution the accused have taken loan against the cheque. However, the basic thing required to be seen on the basis of proved account statement of referred accounts to indicate, what amount of loan was taken default amount and to show due amount. The trial Court in Paragraph-35 of judgment has observed that, prosecution has not proved account statement of referred accounts. The

transaction took place in the year 1997-1998. Thereafter, there was drastic change in banking system as at the relevant time. The statement of accounts were maintained manually but around year 2000, the manual account statements were converted in computerized system. Attempt was made by prosecution to place account statement but no original record was available as of now since the period of more than 20 years passed, so prosecution could not prove the authenticate account statement. The defence had urged that there is no evidence to show that what is loss caused by individual accused to Bank and total loss caused to Bank, which can be seen on the basis of statement of accused. In the alleged fictitious loan account, the loan was sanctioned on the basis of national saving certificate, but no such certificate was placed on record to show that those are forged and fabricated. In paragraph – 64 it is concluded that in 1997-98 the accused committed fraud of Rs. 98,00,000/-. The value of which today is around 8 to 10 Crores. However, how the court has arrived at such figure is not clear.

10. The applicant has been acquitted for the offence under Section 409 of IPC. The accused Nos.4 and 6 were also directed to pay fine of Rs.30,00,000/- each. The income tax returns placed on record by applicant indicate his earning of Rs.6,00,000/- per year.

11. In the case of Satyendra Kumar Mehra (Supra) the Supreme Court has observed that, the appellate Court while exercising power under Section 389 of Cr.P.C. can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the appellate Court while exercising jurisdiction under Section 389 of Cr.P.C. The appellate Court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine. The Orissa High Court in the case of Monika Acharya (Supra) has held that, the expression 'sentence' means not only substantive sentence of imprisonment but also includes sentence of fine. Under Section 389(1) of Cr.P.C. the appellate Court has jurisdiction to order suspension of proceedings for recovery of fine amount during pendency of appeal.

12. In the case of Emperor V. Mendi Ali (Supra) it was observed that, Court should exercise careful discretion in the matter of super imposing fines upon long substantive terms of imprisonment. In Adamji Dalal V/s. The State of Bombay (Supra) it was observed that, the determination of the right of measure of punishment is often point of great difficulty and no had and last rule can be laid down, it being a matter of discretion which is to be guided by a variety of considerations but the Court has always to

bear in mind the necessity of proportion between an offence and the penalty. In imposing fine it is necessary to have as much regard to the pecuniary circumstances of the accused as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases. Due regard has not been paid to these consideration in cases before Court and the zeal to crush the evil of black – marketing and free the common man from plague has perturbed the judicial mind in determination of the measure of punishment. In the case of Shahejadh Khan Pathan (Supra) the apex Court was dealing with appeals against judgment of High Court of Gujarat dismissing appeals. It was observed that, the amount of fine should not be harsh or excessive, where substantial term of imprisonment is inflicted an excessive fine should not be imposed except in exceptional cases.

13. Considering the submissions of both the sides, I pass the following order:

ORDER

- i.** Interim Application Nos. 745 of 2022 and 746 of 2022 are allowed;
- ii.** During the pendency of Criminal Appeal No. 222 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 23rd February, 2022 passed by learned Special

Judge (CBI) Greater Bombay in CBI Special Case No.100 of 1999 is suspended 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 sureties in the like amount;

iii. The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for a period of eight weeks in lieu of surety.

iv. Towards the conviction under Section 420 of IPC r/w Section 120-B, the applicant shall deposit fine amount of Rs.5,00,000/-.

v. Towards the conviction for offences under Sections 120-B of IPC, 465 of IPC, 468 of IPC and 471 of IPC, the applicant shall deposit the entire fine amount of Rs.3,50,000/- imposed by the trial Court.

vi. The total fine amount of Rs.8,50,000/- shall be deposited in the trial Court within a period of eight weeks from the date of release.

vii. Interim Applications are disposed off accordingly.

viii. To verify compliance of deposit of fine, applications be listed after ten weeks.

(PRAKASH D. NAIK, J.)