IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1093 OF 2022
WITH
INTERIM APPLICATION NO.1092 OF 2022
IN
CRIMINAL APPEAL NO.332 OF 2022

Sadiq Sayyed Mir Patel .. Applicant

Versus

Central bureau of Investigation and Anr. .. Respondents

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Mr.V.J. Bhanushali a/w. Mr.Govind Ghogare, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 27, 2022.

P.C. :

In both these applications, the applicant prayed for suspension of sentence and grant of bail pending Criminal Appeal No.332 of 2022.

2 The applicant (accused no.6) is convicted for the offence under Section 120-B of Indian Penal Code ("IPC", for short), and, sentenced to suffer rigorous imprisonment for two years and pay fine of Rs.50,000/-. He is also convicted for the offence under Section 420 read with 120-B of IPC, and, sentenced to suffer imprisonment of

three years and fine of Rs.30,00,000/-. He is also convicted for the offence under Section 465 of IPC, and, sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,00,000/-. He is further convicted for the offence punishable under Section 471 of IPC, and, sentenced to suffer imprisonment for one year and fine of Rs.1,00,000/-. He has been acquitted for the offence punishable under Section 409 of IPC and Section 13(1)(d) read with 13(2) of Prevention of Corruption Act ("PC Act", for short).

3 Learned advocate for the applicant submitted that the applicant was on bail during trial. He has not misused the facility of bail. The case of the prosecution suffers from serious discrepancies. The prosecution has not produced on record the documents to support its case. The trial Court has not assigned any reasons for imposing huge fine amount. The evidence of P.W.10 refers to misappropriation of Rs.78,00,000/-, which is not fortified by any documentary evidence. The maximum sentence imposed by the trial Court is imprisonment of three years. The Appeal preferred by the applicant would not come up for hearing within short span of time. The applicant is in financial constraints. He is aged about 74 years. He belongs to lower strata of the society, and, it is not possible for him to deposit fine amount. The trial Court has given undue importance to forged or fake National

Saving Certificate, which are not produced before the Court, and, there is nothing to show that the said documents were fake. The finding of the trial Court is contrary to the evidence on record. The sentence is of short term. Fine amount imposed by the trial Court may be relaxed while suspending the sentence, till final disposal of the Appeal. The Applicant is not in a position to deposit more than Rs.1,00,000/-, towards the entire fine amount imposed by the trial Court. The co-accused Ashok Leharchand Bhansali (accused no.3) and accused no.1 Amid Ali Ghulam Vohra, were granted bail by this Court by suspending sentence. The Court had also relaxed the condition to depositing the fine by permitting the accused to deposit the reduced fine amount.

4 Mr.Patil appearing for CBI submitted that there is sufficient evidence to establish the offence against the applicant. The applicant has been convicted on the basis of evidence. Fine amount was calculated on the basis of the misappropriation and considering the fact that the accused had utilised the misappropriated amount since last several years.

5 Learned advocate for applicant has relied upon the following decisions :-

(a) Satyendra Kumar Mehra Vs. State of Zharkhand (2018)[1];

(b) Emperor V/s. Mendi Ali[2];

(c) Adamji Umar Dalal V/s. State of Bombay[3];

(d) Monika Acharya V/s. State of Orissa[4];

(e) Shahejadkhan Mehebubkhan Pathan V/s. State of Gujrat in Criminal Appeal No.1593 of 2012;

6 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. deposited in accounts and sent for clearing. Cheques were 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 Rs.98,28,000/-. 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.

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1 (2018) 15 SCC 139
2 AIR 1941 Allahbad 310
3 AIR (39) 1952 SC 14
4 2000 (1) Orissa LR 299

7 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. 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 what loss is caused by individual accused to Bank and total loss caused to Bank. 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.

8 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.

9 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 hard and fast 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 Shahejadkhan 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.

10 Considering the above submissions, I pass the following order:

:: **O R D E R** ::

(i) Interim Application Nos.1092 of 2022 and 1093 of 2022, are allowed;

(ii) During the pendency of Criminal Appeal No.332 of 2022, the sentence of imprisonment imposed *vide* judgment and order dated 23rd February, 2022, passed by the learned Special Judge (CBI) Gr. Bombay, is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant/appellant is permitted to furnish cash bail security of Rs.25,000/-, for a period of eight weeks, in lieu of surety;

(iv) Towards the conviction under Section 120-B of IPC, the applicant is directed to pay the fine amount of Rs.20,000/-, till the final disposal of Appeal;

(v) Towards the conviction for offence under Section 420 read with 120-B, the applicant is directed to deposit Rs.75,000/-, towards the fine amount, till the final disposal of Appeal;

(vi) Towards conviction under Section 465 of IPC, the applicant shall deposit the fine amount of Rs.25,000/-, till the final disposal of Appeal;

(vii) Towards conviction under Section 471 of IPC, the applicant is permitted to deposit the fine amount of Rs.25,000/-, till the final disposal of Appeal;

(viii) The fine amount shall be deposited before the trial Court within a period of 10 weeks from the date of his release;

(ix) Interim Application Nos.1092 of 2022 and 1093 of 2022, stand disposed of accordingly;

(x) Trial Court shall report this Court about compliance of this order.

(**PRAKASH D. NAIK, J.)**