

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.778 OF 2019  
IN  
CRIMINAL APPEAL NO.720 OF 2019

Bhagwanji Dayaram Joshi ... Applicant / Appellant

Vs.

The Union of India through CBI,  
STF, Mumbai and another ... Respondents

Mr. Aabad Ponda, Senior Advocate a/w Mr. Bhomesh Bellam i/by Mr. Jash B Vyas for the Applicant/Appellant.

Ms. Purnima H Kantharia, Special PP for Respondent No.1-CBI

Mr. Y M Nakhwa, APP for the Respondent/State.

**CORAM : S. S. SHINDE &  
SARANG V. KOTWAL, JJ.**

**DATE : MARCH 21, 2022**

**P.C. :**

. This is an application for bail filed by the Applicant - original Accused No.6 for releasing him on bail during pendency of his appeal before this Court, which is already admitted.

2. The Applicant is original Accused No.6, who was convicted by the Special Judge (CBI) Greater Bombay for the major offences punishable under Sections 420 r/w. 120-B of the Indian Penal Code and sentenced to suffer RI for 7 years and to pay fine of Rs.1 Lakh in default to suffer SI for two years, under Section 466 r/w. Section 120-B of IPC and sentenced to suffer RI for 7 years and to pay fine of Rs.1 Lakh in default to suffer SI for two years, under Section 467 r/w. Section 120-B of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.1 Lakh in default to

suffer SI for two years, and under Section 13(1)(d) r/w. Section 13(2) of Prevention of Corruption Act and sentenced to suffer RI for 4 years and to pay fine of Rs.10,000/- in default to suffer SI for six months. The operative part of the trial court's judgment also shows that the sentence of imprisonment of Accused No.6 for the offences punishable under Sections 420 r/w. Section 120-B as well as Section 466 r/w. Section 120-B and Section 467 r/w. Section 120-B of IPC were to run consecutively.

3. There were in all 8 Accused before the trial Court. Accused Nos.1 to 5 were private individuals; Accused No.6 is the present Applicant / Appellant, who, at the relevant time, was working as Assistant General Manager in Bank of India, Mandhavi Branch; Accused No.7 was a bank officer who died during the pendency of the appeal, and therefore, trial abated against him; and Accused No.8 was a lawyer on the bank's panel.

4. The prosecution case, in brief, is that in September 2009 M/s.Swift Services Linings (SSL) approached Mandavi Branch, Bank of India for credit facilities. Accused Nos.1 and 2 were the partners of the said SSL firm. Accused No.3 was the CA of the said firm. Accused No.4 was involved in creating forged documents. Accused No.5 had impersonated himself as Mohanlal P. Aneja and produced forged documents. The prosecution case is that credit facilities of Rs. 2,50,00,000/- were sanctioned by the Applicant's bank. For that purpose, an open plot situated in Survey No.31, CTS No.1304, Varsova Village, Andheri Mumbai purportedly belonging to one Mohanlal P Aneja was given as a security. The said Mohanlal P Aneja was not in existence. The value of the property

was shown as Rs.243.14 lakhs. Accused No.8 was a bank's approved lawyer. He gave title clearance certificate in regard to the collateral securities offered by Accused Nos.1 and 2. The applicant by misusing his official position had sanctioned the credit facilities without ascertaining the genuineness of the proposal and documents produced along with proposal and huge amount was siphoned off. This in short is the prosecution case.

5. We have heard Mr. Aabad Ponda, learned senior counsel appearing for the Applicant - original Accused No.6 and Ms. Purnima H Kantharia, learned Special Public Prosecutor appearing for the Respondent - CBI.

6. Mr. Ponda, learned senior counsel for the Applicant, submitted that, the Applicant had acted in bonafide manner on the basis of the reports given to him by Accused No.8, who had given a title certificate as well as by PW-1 who had issued valuation report. It is submitted that the Applicant had not acted in fraudulent manner in sanctioning the loan. He had only acted upon the documents tendered by the Accused No.8 and PW-1, and he was not concerned with the forgery of documents. There is no evidence showing his involvement in the conspiracy. He submitted that the Accused No.8 - lawyer on the panel of bank, who had actually issued the title certificate, was sentenced for three years and as of today he is on bail during pendency of his appeal. He emphasized that the Applicant is of 77 years of age and the Appeal itself is likely to take a very long time even to reach the stage of final hearing, and therefore, it would be unfair for the Applicant to undergo imprisonment in his last days without his appeal being heard. He further submitted that the roles of the other accused are

entirely different than the role attributed to the present Applicant. The other accused are private individuals, who are convicted for the individual offences without taking aid of Section 120B of the IPC; however, the Applicant himself is convicted and sentenced for the offences punishable under Sections 420, 466 and 467 r/w 120B of the IPC. Mr. Ponda, learned senior counsel for the Applicant, submitted that PW-1 himself had given valuation report regarding the same plot. He has not been made an accused. Mr. Ponda further submitted that the Applicant was never arrested during investigation and for the entire period of trial he was on bail. He submitted that the Applicant has one more antecedent to his discredit, but, in that case he was sentenced to suffer 3 years' imprisonment and as of today he is on bail in that case.

7. Ms. Kantharia, learned Special PP for the Respondent - CBI, strongly opposed this Application on merits. She submitted that the role attributed to Accused No.8 is different from that of the present Applicant - Accused No.6. She further submitted that PW-1 has clearly deposed that the Applicant was well aware of the fraudulent transaction. She submitted that Applicant cannot escape from his liability. He was involved in fraud causing huge loss to the bank. She invited our attention to the observations made by the learned trial Judge in his judgment in respect of the role played by Accused No.8. She also invited our attention to the evidence of PW-1 who was the valuer.

8. We have considered these submissions. Before touching upon the merits of the case, it is pertinent to note that the Applicant is 77 years of

age and the appeal is likely to take a very long time even to be listed for final hearing. In that view of the matter, we are in agreement with the submissions advanced by Mr. Ponda for the Applicant that, considering the age of the Applicant, his application for bail requires sympathetic consideration.

9. As far as merit of the matter is concerned, the learned trial Judge has discussed the role played by Accused No.8 i.e. the lawyer who was on the panel of the bank. The trial Judge has discussed his role from paragraph 153 onward in his judgment. As per the prosecution case, the title certificate of the same plot was issued by Accused No.8. There is no dispute about this fact. However, we do not find any serious discussion in the judgment distinguishing the role played by the Accused No.8 and Accused No.6. Accused No.8 was sentenced to maximum punishment of 3 years and we do not find any sufficient reason to treat the present Applicant differently from Accused No.8. Ultimately the applicant has acted upon this certificate. Therefore, it is necessary to consider as to why the Applicant should be treated differently for the purpose of sentencing him than the Accused No.8.

10. As far as evidence of PW-1 is concerned, he has given valuation of that particular plot purportedly belonging to one Aneja. He has stated that when he visited the property, he could not exactly identify the plot. He could not identify the property as the CTS number and name of the owner were not displayed on the property on any board. Therefore, he had a discussion with the present Applicant. At that time, the Applicant had

coordinated his meeting with Accused No.3 - Mr. Bohra, who was the CA of the firm. He has further deposed that Mr. Bohra in turn supplied him notarized copies of documents. He then valued the plot at Rs.2,43,14,400/-. It appears that based on those documents, the Applicant had approved sanctioning of the loan. Ms. Kantharia, learned Special PP for the Respondent - State, invited our attention to somewhat damaging statement made by PW-1 against the present Applicant. He has deposed in Paragraph 18 of his deposition that CTS 1309/4 was a garden plot of the layout of the society. He came to know about that fact, and then he had informed it to the Applicant about the same. At that time, the Applicant had allegedly replied that they had not acted upon the proposal. She relied on this particular part of deposition of PW-1. As against this, Mr. Ponda invited our attention to the cross examination of PW-1 wherein he has admitted that after furnishing his valuation report to the bank, he had not informed the bank about any adverse status of the property involved therein. This contentious issue will have to be decided at the stage of final hearing of the matter.

11. Considering the above discussion, particularly taking into account the advanced age of the Applicant, in our opinion, he can be granted bail during the pendency of his Appeal on certain conditions. Hence the following order:-

### **O R D E R**

- 1) The Application is allowed.
- 2) During the pendency and final disposal of Criminal Appeal No.720 of 2019, Applicant Bhagwanji Dayaram Joshi is

directed to be released on bail on executing P.R.Bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) with one or two sureties in the like amount.

- 3) The Applicant shall deposit his passport, if any, with the Investigating Officer before his release on bail.
- 4) The Applicant shall furnish his residential address and contact number to the Investigating Officer before his release on bail.
- 5) The Applicant shall report to the Investigating Agency's Office at Mumbai once in two months till disposal of his Appeal.
- 6) Criminal Application is disposed of accordingly.

**(SARANG V. KOTWAL, J.)**

**(S. S. SHINDE, J.)**

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