

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

**INTERIM APPLICATION NO.3577 OF 2022
IN
CRIMINAL APPEAL NO.1047 OF 2022**

Manav Satayanaian Jagarwal

and another

..... Applicants

Versus

Central Bureau of Investigation

(at the instance of ACB) and another

.... Respondents

Mr. Mahesh Vaswani, Advocate a/w. Ms. Shreya Tiwari, Ms. Sheetal Patkar, i/b. Dharini N. Nagda, for the Applicants.

Mr. H.S. Venegavkar, Special Counsel a/w. Kamar Ali Shaikh for the Respondent No.1-CBI.

Smt. M.R. Tidke, APP for the Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 08th DECEMBER, 2022

P.C. :

1. This is an application for bail pending final disposal of Criminal Appeal of the applicants.

2. The applicants were the original accused Nos.1 & 2 in CBI Special Case No.48/2018. At the conclusion of trial, the Special Judge, CBI, Greater Bombay convicted and sentenced the applicants for commission of the offence

punishable under Section 120-B of the Indian Penal Code read with Section 12 of the Prevention of Corruption Act and they were sentenced to suffer RI for three years and to pay fine of Rs.5,000/- and in default to suffer SI for six months. They were granted set-off under Section 428 of Cr.P.C..

3. Heard Shri Mahesh Vaswani, learned counsel for the applicants, Shri H.S. Venegavkar, learned Special Counsel the respondent No.1-CBI and Smt. M.R. Tidke, learned APP for the respondent No.2-State.

4. The prosecution case is that the complainant was working as Assistant Commissioner of Customs, R & I, New Custom Office, Mumbai. His job was to check and verify the smuggling of goods. On 9.4.2018, he received information that imported goods in the nature of mobile phone accessories worth Crores of Rupees were being smuggled. The tempo carrying those goods was intercepted. It is alleged that on 10.4.2018, one Rajendra Rajpurohit, who was relative of the applicant No.1 approached the complainant for releasing the goods. The applicant No.2

was a clearing agent. They offered Rs.20 Lakhs as bribe for releasing the goods. The complainant refused to accept the bribe. He gave complaint and on 13.4.2018 a trap was laid and it was conducted in Poonam Restaurant. An amount of Rs.10 Lakhs was recovered at the time of trap. Both the Applicants were involved in the efforts to pay the bribe amount at the time of trap. On this basis, the investigation was conducted.

5. Learned counsel for the applicant submitted that the sentence is short and the appeal is not likely to be decided within that period. The applicants were on bail during trial and even after their conviction, they were granted bail under Section 389 of Cr.PC. He further submitted that there is discrepancy in describing the actual trap. The complainant himself has stated that the bribe amount was kept in LCD box. There was no mention of a polythene bag. However, PW-2 the pancha and PW-10 the investigating officer have specifically deposed about the bribe money being kept in LCD box which was kept in turn

in a polythene bag. According to learned counsel for the applicants, this is a serious discrepancy.

6. Learned counsel for the applicants also emphasized the fact that the aforementioned Rajendra Rajpurohit is not made an accused and on the other hand he is examined as a prosecution witness. Even as per the prosecution case the goods belonged to him and, therefore, both the applicants were wrongly prosecuted and convicted.

7. Learned Special Counsel for the respondent CBI opposed this application, though he conceded that the sentence is short. He submitted that the discrepancy which is pointed out by learned counsel for the applicants is minor and nothing turns on that discrepancy. The bribe amount which is recovered is quite huge.

8. I have considered these submissions. Some arguable points are raised in this appeal which will have to be considered at the stage of final hearing. The sentence is short. The appeal is not likely to be decided within that period. The applicants were on bail during trial. Therefore,

the applicants can be released on bail. However, considering seriousness of the allegations and recovery of Rs.10 Lakhs at the time of conducting trap, I am inclined to issue notice for enhancement of the sentence to the applicants.

9. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.1047/2022, the applicants are directed to be released on bail on their furnishing PR. bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) each with one or two sureties each in the like amount.
- ii. Issue notice for enhancement of the sentence on both the applicants, which shall be served at the time of the applicants' executing PR bonds before the trial Court.
- iii. With these observations, Interim Application is disposed of.

(SARANG V. KOTWAL, J.)