IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4199 OF 2022
WITH
INTERIM APPLICATION NO.4194 OF 2022
IN
CRIMINAL APPEAL NO.1209 OF 2022

Vinayak M. Bhende .... Applicant

versus

State of Maharashtra & Anr. .... Respondents

…....

- Mr. Rajiv Patil, Sr. Adv. i/by Mr. Jaideep Lele with Ms. Namrata Agashe, Advocates for Appellant .
- Mrs. M.R.Tidke, APP for the State/Respondent.
- Mr. Shreeram Shirsat with Mr. Amandeep Singh Sra with Nishi Singhvi with Mr. Shekhar Mane with Anna Oommen for CBI/ R.No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 14th DECEMBER, 2022

P.C. :

1. Interim Application No.4194 of 2022 is for releasing the applicant on bail during the hearing and final disposal of the Criminal Appeal No.1209 of 2022.

2. Interim Application No.4199 of 2022 is for following two main prayers;

(a) Pending the hearing and disposal of the Criminal Appeal, execution and implementation of the judgment and order dated 2nd November, 2022 passed by the Hon'ble Special Court, Greater Bombay in CBI Special Case No.24 of 2005 be suspended;

(b) Pending hearing and disposal of the Criminal Appeal, condition requiring deposition of fine amount Rs.20 Lakhs be waived and/or modified.

3.The Applicant was convicted and sentenced by Special Judge (CBI) vide judgment and order dated 2nd November, 2022 passed in CBI Special Case No.24 of 2005 along with CBI Special Case No. 4 of 2006. Applicant was the Original Accused no.12 and was sentenced to suffer rigorous imprisonment for two years for commission of offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and to pay fine of Rs.20 Lakhs and in default to undergo rigorous imprisonment for six months.

4. Prosecution case in short, is that the main accused Toufiq Haji Gaffar used forged documents for clearing the goods

without paying duty. For that purpose he used to take help of his employees and Clearing House Agents. Applicant was Assistant Commissioner of Customs. Allegations against the applicant are that he relied on the documents prepared and submitted by the main accused thereby helping accused no.1 to import the goods without paying duty. Loss caused to the Government was to the tune of Rs.4.20 Crores.

5.Learned Senior Counsel for the applicant submitted that there is absolutely no evidence against the applicant even suggesting that he has committed any offence. At the highest, it can be argued that he has acted negligently. According to the learned Senior Counsel, the applicant had relied on the documents for clearance of the assignment forwarded by the Clearing House Agents. Those Clearing House Agents were approved by the Government. The Applicant had relied on those documents and there cannot be offence in respect of that particular act.

6. The learned counsel for the CBI, on the other hand, submitted that the offence could not have been committed without active participation of the applicant. Applicant was the Controlling Authority, who had power to stop passing of those goods if

documents were doubtful. He had deliberately helped accused no.1 in the commission of offence.

7. Learned Senior Counsel for the Applicant also submitted that the sentence is short. Maximum sentence is two years and the Appeal is not likely to be decided within that period. Therefore, this is a valid ground for granting bail pending final disposal of the appeal. He further submitted that imposition of fine of Rs.20 Lakhs is without any basis. There was no recovery at the instance of the applicant and no reasons are given by the learned Judge for imposing such a heavy fine.

8. Learned counsel for the CBI submitted that considering the total value involved, i.e., Rs.4.20 Crores, fine of Rs.20 Lakhs cannot be said to be excessive.

9. I have considered these submissions. Learned Counsel for the Applicant has rightly submitted that the sentence is short and within that period the appeal is not likely to be decided. On merits, the Appellant has raised certain points, which can be decided during final hearing of the appeal. Therefore, in my view, bail can be granted to the appellant pending his appeal.

10.As far as imposition of fine of Rs.20 Lakhs is concerned, in the judgment, there is hardly any discussion as to how this higher figure of 20 Lakhs is arrived at by the learned Judge for the imposition of this fine amount on the applicant in this case. It is not the case of the Respondent-CBI that any amount was recovered from or at the instance of the applicant. Therefore, in my opinion, at this stage some concession can be given to the applicant so that he is not required to pay entire fine amount. At this stage, the learned Senior Counsel for the applicant submitted that he is not in a position to procure Rs.20 Lakhs to pay as fine amount, however, the applicant is in a position to secure Rs.5 Lakhs to pay as fine. At this stage, in my view, applicant can be permitted to deposit Rs.5 Lakhs out of the total fine amount of Rs.20 Lakhs.

11.As far as suspension of entire judgment is concerned, I am not inclined to pass that order, which would also mean suspension of conviction. But I am inclined to grant bail by suspending the substantive sentence and I am inclined to give conce ssion in depositing fine amount. Beyond that, I am not inclined to grant any other relief at this stage.

12.Hence, following order;

13. During the pendency and final disposal of the Criminal Appeal No.1209 of 2022, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only), with one or two sureties in the like amount.

14. The Applicant is permitted to deposit Rs.5 Lakhs before the Trial Court in stead of entire fine amount of Rs.20 Lakhs, which was imposed by the impugned judgment and order.

15. Substantive sentence is suspended to that extent.

16. It is made clear that there is no suspension of conviction.

17.With these observations, both the applications are disposed of.

(SARANG V. KOTWAL, J.)