IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 508 OF 2019
IN
CRI. APPEAL NO. 1318 OF 2019

Vikas Gourihar Narnavar ...Applicant/Appellant.
Versus
The State Of Maharashtra & Anr. ...Respondents.

WITH
INTERIM APPLICATION NO. 898 OF 2022
IN
INTERIM APPLICATION NO. 508 OF 2019
IN
CRI. APPEAL NO. 1318 OF 2019

Vikas Gourihar Narnavar ...Applicant/Appellant.
Versus
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Vikas Gourihar Narnavar ...Applicant/Appellant.
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The State Of Maharashtra & Anr. ...Respondents.

Mr. Manish Bohra, Advocate i/by M/s. A. S. Khan & Associates for the Applicant/ Appellant.

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

Ms. Anubha Rastogi, Advocate a/w. Shikha Nambiar for the Respondent No. 2.
Mr. Ankon Ray, SEBI Officer, is present.

CORAM : PRAKASH D. NAIK, J.
DATE : 6th APRIL, 2022.

P. C. :

1. The Applicant/Original Appellant has been convicted by judgment and order dated 9th September, 2019 for the offence punishable under section 24 (2) of the Securities and Exchange Board of India Act, 1992. He is sentenced to suffer rigorous imprisonment of one and half year and to pay fine of Rs. 7,50,000/-. It was further directed that if the fine amount of Rs. 7,50,000/- is realized, an amount of Rs. 7,00,000/- shall be paid to SEBI as compensation by demand draft or pay order and an amount of Rs., 50,000/- shall be deposited in the court.

2. Interim Application Nos. 508 & 509 of 2019 are preferred for suspension of sentence and grant of bail; whereas Interim Application No. 898 of 2022 is preferred for seeking relaxation in depositing the fine amount.

3. The Appeal, challenging the judgment of conviction, has been admitted by this Court and pending for final disposal. The sentence of imprisonment was suspended by the trial court on the date of conviction for a period of one month, on depositing part fine amount of Rs. 50,000/-.

4. This Court by order dated 17th October, 2019, continued the order of suspension passed by trial Court, by granting time to deposit fine amount.

5. Learned Advocate for the Applicant has submitted that the Applicant has a good case on merit. The impugned judgment suffers from serious infirmities. The amount of Rs. 50,000/- has been deposited in the trial court. The Applicant was given clean chit in the main matter. The fine of Rs. 7,50,000/- is arbitrary. The offence under section 24(2) of the SEBI Act is not made out against the Applicant. The sentence was suspended by the trial court on the date of conviction. The adjudication order was not served upon the Applicant. The Applicant is not in a position to deposit the fine amount. He is in financial constrains. The fine amount may be relaxed by permitting the Applicant to further deposit the amount of Rs.50,000/- towards fine.

6. The learned Advocate for the Respondent No.2-SEBI has submitted that there is sufficient evidence against the Applicant. The adjudication officer’s order relied upon by the Applicant has no connection with the present case. The Applicant has been convicted by judgment and order dated 9th September, 2019. Sufficient time was available to the Applicant to deposit the fine amount. No relaxation for depositing the fine amount may be granted to the Applicant. Despite serving adjudication order, the Applicant did not comply the said order. The offence under section 24(2) of the SEBI Act is clearly made out.

7. The learned Advocate for the Applicant in support of his submission relied upon the order dated 11.12.2017 passed by this court in Criminal Application No. 1473 of 2017 in the case of **Rameshchandra K. Jain VS. The State of Maharashtra & Anr**. and contended that in the said case the Accused therein was directed to pay fine of Rs. 3,00,000/- and the Applicant therein was permitted to deposit Rs. 1,50,000/- towards fine and sentence of imprisonment was suspended. He also relied upon the decision of the Apex Court in the case of **Rama Narang VS. Ramesh Narang & Ors**. [1995 (2) SCC 513] and submitted that in paragraph 15 of the said order, the Apex Court observed that the 'order' referred in Section 389(1) must be an order capable of execution. Reliance is also place on the order passed by this court in Criminal Writ Petition No. 2251 of 2008, wherein this court had directed the relaxation of fine amount pending appeal.

8. The Applicant herein was on bail during trial. Sentence was suspended by the trial court on the date of conviction. Subsequently, by way of interim order, this court had suspended the sentence. The Applicant has been directed to pay fine of Rs. 7,50,000/-. The Applicant has deposited an amount of Rs. 50,000/- before the trial court. The sentence is of short term and hence, there is no impediment in suspending the sentence of imprisonment and granting of bail.

9. The Applicant has preferred Interim Application

No. 898 of 2022 and submitted that the Applicant is not employed. He is helping his wife, by selling dairy products in Chawl. He has no relative or friends to help him in depositing the huge fine amount. He has two school going children, who are studying in 7th and 3rd standard. Due to spread of Covid -19 pandemic, the Applicant and his family was affected financially and on health front and they are actually not in a position to deposit Rs. 7,50,000/- towards fine.

10. The Appeal preferred by the Applicant has been admitted by this court. From the tenor of the judgment and order, it appears that the transactions are of the year 2005. The summons was issued to the accused on 02.03.2007 under section 11-C(2) and 11C(3) of the SEBI Act. Adjudicating Officer has submitted that the Applicant has failed to comply with the summons and imposed penalty of Rs.5 lakhs by order dated 21st December, 2009. The complaint was filed against the Applicant under section 24(2) of the SEBI Act in which he has been convicted, as stated hereinabove.

11. Several grounds are urged in the Appeal, challenging the impugned judgment and order of conviction. Considering the factual aspects of the matter and the financial condition of the Applicant, relaxation can be granted to the Applicant for depositing the fine amount.

12. Hence, I pass the following order :

ORDER

i. Interim Application Nos. 508 & 509 of 2019 and Interim Application No. 898 of 2022 in IA No. 508 of 2019 are allowed.

ii. The sentence of imprisonment imposed by the Special Judge under the SEBI Act, vide judgment and order dated 9th September, 2019 passed in SEBI Special Case No. 8 of 2013 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. The Applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of **twelve** weeks in lieu of surety.

iv. The Applicant shall deposit the amount of Rs. 1,50,000/- before the trial Court towards the fine amount within **eight weeks** from today.

v. The Applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the Appeal.

vi. In the event, there are two consecutive defaults of the Applicant/ Appellant in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.

vii. In the event, the fine amount is not deposited within the time, as stipulated in this order, the trial Court will be at liberty to initiate proceedings and the Respondents will be at liberty to prefer an application for cancellation of bail granted by this court.

viii. All the above Interim Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)

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Spborey/-