

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.2880 OF 2023
IN APEAL/701/2023 WITH APEAL/701/2023**

**MAHEBOOB AMIN MASULDAR
VERSUS
THE STATE OF MAHARASHTRA**

...

Advocate for Applicant : Mr. Chatterji Joydeep
APP for Respondent/State : Mr. K.S. Patil

...

CORAM : S. G. MEHARE, J.

DATED : AUGUST 07, 2023

PER COURT :-

1. Issue notice to the State. Learned APP waives service of notice for the State.

2. Learned counsel for the applicant would submit that the applicant has been convicted for the offence punishable under Section 7 and 13(2) of the Prevention of Corruption Act and sentence to suffer R.I. for four years under Section 7 and R.I. for five years under Section 13(2) of the Prevention of Corruption Act. He would submit that the demand and acceptance of the alleged bribe has not been proved beyond reasonable. During the course of trial, he was on bail. He referred to the impugned judgment and order and pointed out that the case laws relied upon by the accused on the

point of acceptance and demand of bribe have also not been properly appreciated. Hence, his sentence may be suspended.

3. Per contra, learned APP for the State would submit that the applicant did not rebut the presumption as provided under Section 20 of the Prevention of Corruption Act. The prosecution had established the case beyond a reasonable doubt. The offence is against the society. There are no grounds for suspension of sentence. Hence, his sentence may not be suspended.

4. Perused the papers and impugned judgment and order. This is a first appeal wherein the evidence may be re-appreciated. The question that has been raised is that the acceptance of the bribe has not been properly appreciated. The conviction of the applicant is for a short term. Considering the ratio in the case of Kiran Kumar Vs. State of M.P., (2001) 9 SCC 211, the Court is of the view that this is a fit case to suspend the sentence. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) The execution, implementation, effect and operation of the impugned judgment and order of Special Judge and Additional Sessions Judge, Jalna in Special Case No.33 of 2016 dated 02.08.2023 to suffer R.I. for four and five years respectively for the

offence punishable under Section 7 and 13(2) of the Prevention of Corruption Act, is suspended till the conclusion of trial.

(iii) The applicant shall be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount.

(S. G. MEHARE, J.)