

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

**INTERIM APPLICATION NO. 341 OF 2023
IN
CRIMINAL APPEAL NO. 70 OF 2023**

Suresh Khetan

..Applicant

Versus

CBI, BSFC, Mumbai & Anr.

..Respondents

Mr. Dhiraj Mirajkar a/w. Vikas Kapile a/w. Nipa Shah i/b. Mirajkar and Associates for Applicant.

Mr. Aayush Kedia i/b. H. S. Venegavkar for CBI/Respondent No.1.

Mr. S. R. Agarkar, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 2 FEBRUARY 2023

PC :

1. The Applicant was the original accused No.2 in CBI Special Case No.104 of 2009 before learned Special Judge (CBI), Greater Bombay. Vide his Judgment and order dated 10/01/2023, learned Trial Judge convicted the applicant for commission of offence punishable U/s.7 of the Prevention of Corruption Act, 1988 (for short 'P.C.Act') r/w. Section 120B of the I.P.C. and Under

sections 13(2) r/w. 13(1)(d) of the P.C. Act. On both these counts separately he was sentenced to suffer R.I. for three years and to pay a fine of Rs.20000/- and in default of payment of fine to suffer R.I. for six months.

2. The prosecution case is that the accused No.2 i.e. the present applicant was working as an Inspector with the Income Tax Department. He approached PW-6 Arun Patil and told him that there was a complaint against him. PW-6 Arun Patil was in the business of construction. He was one of the partners of a company by name M/s. Aditya Enterprises. The applicant approached him on 19/12/2008 and told him about that complaint. He gave phone number of the accused No.1 Rajkumar Bhatia who was working as Assistant Commissioner of Income Tax. The applicant told PW-6 that he should meet accused No.1. Accordingly, PW-6 met him. It is the prosecution case that, PW-3 Rajkumar Khushlani was the partner of M/s. Aditya Enterprises. He was told by PW-6 Arun Patil about what the applicant had told him. It is alleged that the accused No.1 initially demanded bribe of Rs.35 lakhs and after some negotiations it was brought down to Rs.15 lakhs. PW-3 and

PW-6 did not want to pay that amount. They approached the C.B.I. and lodged the complaint. A trap was laid on 21/01/2009. It is the prosecution case that the applicant accepted the currency notes sprinkled with phenolphthalein powder which were kept in news paper packet which were also sprinkled with phenolphthalein powder. The Applicant was caught. His left hand was dipped in sodium carbonate solution. The liquid turned into pink colour. The liquid was sent for chemical analysis which also confirmed the presence of phenolphthalein powder. On these allegations, both the accused were tried and ultimately convicted.

3. Learned counsel for the applicant submitted that the C.A. report at Exhibit 96 shows that what was received by the Chemical Analyzer's office was a bottle of colourless liquid and, therefore, there is serious doubt whether the same solution was sent to C.A. Apart from that, the chit on which the telephone number of the accused No.1 was written and the original complaint which was the starting point of all these allegations was not produced in the court. He further submitted that the applicant was on bail during trial and even after his conviction he was

granted bail U/s.389 of the Cr.p.c.

4. Learned Special P. P. opposed this application. He submitted that the colour of the liquid will not make any difference as C.A. report was produced U/s.293 of the Cr.p.c. No further efforts were taken by the defence to challenge that C.A. report. He further submitted that the trap was successful and, therefore, the prosecution has proved its case beyond reasonable doubt.

5. I have considered these submissions. Both sides have raised important issues which will have to be decided at the final hearing stage of the Appeal. The applicant was on bail during trial. The incident is old. The date of complaint is 19/01/2009. Even after his conviction he is granted bail by the Trial Court U/s.389 of the Cr.p.c. The Appeal is not likely to be decided within a short period. Considering these aspects, the applicant can be granted bail pending his Appeal.

6. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.70 of 2023, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.50000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)