

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

**INTERIM APPLICATION NO. 342 OF 2023
IN
CRIMINAL APPEAL NO. 71 OF 2023**

Rajkumar Bhatia

..Applicant

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Jagdish Shetty a/w. M. A. Shaikh for Applicant.

Mr. Aayush Kedia i/b. H. S. Venegavkar for CBI/Respondent No.2.

Smt. M. R. Tidke, APP for State/Respondent No.1

CORAM : SARANG V. KOTWAL, J.

DATE : 2 FEBRUARY 2023

PC :

1. The Applicant was the original accused No.1 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.1 i.e. the present applicant was working as Assistant Commissioner of Income Tax. The accused No.2 Khetan, who was an Income Tax Inspector approached PW-6 Arun Patil and told him that there was a complaint filed against PW-6 and for that he should meet the present applicant. Accused No.2 gave him the phone number of the applicant on a chit. 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 accused No.2 had told him. PW-6 and PW-3 met the present applicant. It is the prosecution case that the applicant 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. Ultimately, on the day of trap i.e. on 21/01/2009, an amount of Rs.2 lakhs was kept in a paper packet. Everything was sprinkled with

phenolphthalein powder. It is alleged that the accused No.2 accepted that packet in a car. After that he 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 applicant 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.71 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.)