

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

**INTERIM APPLICATION NO.789 OF 2023  
IN  
CRIMINAL APPEAL NO.224 OF 2023**

Sunil Baliram Bane  
versus  
State of Maharashtra

.... Applicant  
.... Respondent

.....

- Mr. Sujit Shelar a/w Mihir Nakrani, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.  
DATE : 01<sup>st</sup> MARCH, 2023**

**P.C. :**

1. Learned counsel for the Applicant at the outset states that he is not pressing the prayer clause (b) i.e. for suspension of conviction. Therefore, that prayer is not considered in this application.

2. This application is considered only for the question of grant of bail to the Applicant during pendency of his Appeal. The Applicant has filed Criminal Appeal No.224 of 2023 challenging the Judgment and Order dated 22/02/2023 passed

by the Additional Sessions Judge, Thane, in Special Case (ACB) No.7/2015.

- (i) The Applicant was convicted for commission of offence punishable u/s 7 of the Prevention of Corruption Act and was sentenced to suffer simple imprisonment for three years.
- (ii) He was also convicted for commission of offence punishable u/s 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and was sentenced to suffer simple imprisonment for four years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer simple imprisonment of two months.

Learned counsel for the Applicant submitted that the Applicant has paid the fine.

3. Heard Mr. Sujit Shelar learned counsel for the Applicant and Mr. S. R. Agarkar, learned APP for the State.

4. The prosecution case is that the Applicant was incharge of the Vigilance Department of Octroi of the BMC. His nature of

duty was assessment and collection of Octroi. On 29/05/2014, seven trucks were seized. The complainant was Octroi agent for those trucks. It is the prosecution case that, for releasing those trucks, the Applicant demanded Rs.3 lakhs as bribe amount on 05/06/2014, 11/06/2014 and 16/06/2014. The complainant did not want to pay the bribe amount. He lodged the complaint with ACB, Thane. The demand was verified on 16/06/2014 and the trap was laid on 17/06/2014. It is the prosecution case that the Applicant accepted the bribe amount by entering the car of the complainant. The Pancha was waiting outside.

5. Learned counsel for the Applicant invited my attention to the observation of the learned Trial Judge made in the paragraph No.23 of the impugned Judgment. It was observed that the complainant was prosecuted on many occasions for the octroi evasion. The learned Judge has observed that considering this background though his evidence was sound, clear and reliable, it could not be the sole basis to convict the accused. His evidence could be used as and by way of corroboration.

6. Thereafter in paragraph No.24, the learned Judge has observed that P.W.2, who was the Pancha witness, had accompanied the complainant to the office of the Applicant and in presence of this Pancha witness, the Applicant had demanded bribe of Rs.3 lakhs.

7. Learned counsel for Applicant referred to the cross-examination of this Pancha/P.W.2, wherein he has admitted in paragraph No.10 that the complainant went inside the cabin and he was waiting outside. He further added that since he did not enter, he was not knowing as to who was present inside. The observations of the learned Judge in that behalf is incorrect on facts. He further submitted that the trucks were already released on 07/06/2014 and therefore there was no occasion to demand and accept the bribe subsequent to that. He submitted that on 09/06/2014 another truck connected with the complainant was seized and that prompted the complainant to take these steps against the Applicant. This conduct of the complainant shows that it was a false case and the Applicant was trapped to remove

him from his job, so that the complainant's activities would have no obstacles. Learned counsel for Applicant submitted that the Applicant was on bail during trial. There are no other antecedents against the Applicant. Learned counsel further submitted that though the Pancha witness states that he had seen the complainant handing over the amount to the Applicant, it is an omission from the Trap Panchanama and it is not mentioned in the Trap Panchanama.

8. Learned APP opposed these submissions on merits. He submitted that there is a transcript of the phone call recording the demand made by the Applicant. Therefore, it cannot be said that the Applicant is not involved in this case. The Anthracene powder was found on his hand which is another incriminating circumstance against the Applicant.

9. I have considered these submissions. Some arguable points are raised by both the side, which require consideration at the final hearing stage. However, the Applicant does seem to

have some strong points in his favour. He was on bail during trial. The Appeal is not likely to be decided within a short period. Therefore, the Applicant deserves to be released on bail during pendency of the Appeal.

10. Hence, the following order :

**ORDER**

- (i) During pendency and final disposal of the Criminal Appeal No.224 of 2023, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.
- (ii) Interim Application stands disposed of accordingly.
- (iii) For a period of six weeks from today, the Applicant is permitted to furnish cash bail for the same amount.

**(SARANG V. KOTWAL, J.)**