

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

**INTERIM APPLICATION NO.919 OF 2023
IN
CRIMINAL APPEAL NO. 1123 OF 2013**

Hemlata Virendra Kumar Gupta ...Applicant
Versus
CBI and Ors. ...Respondents

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Mr. Samarendra Nath Choudhary, Advocate for the Applicant.

Mr. Kuldeep S. Patil Special P. P. for Respondent/CBI.

Mr. Y .Y .Dabake, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th July 2023

PC :

1. The husband of applicant was prosecuted for offences punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. He was serving as Assistant Executive Engineer (Civil) in Airport Authority of India at Mumbai.

2 The case of the prosecution is that, he was holding disproportionate assets to his known sources of income. During the period of March 1988 to November 1998, he has amassed huge assets, which was disproportionate to his known source of income. The husband of applicant was convicted vide judgment and order

dated 28th August 2013 for offences under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act and sentenced to suffer imprisonment for one year and to pay fine of Rs.50,000/-. The judgment of conviction has been challenged by preferring Criminal Appeal No. 1123 of 2013. The appeal has been admitted by this Court and sentence imposed by trial Court is suspended.

3. Learned Advocate for the applicant submitted that, during investigation, residential premises of the applicant and her husband (Respondent No.3) were searched on 12th November 1998 and the assets, documents, original agreement papers, stamp duty receipt etc. were seized. The trial Court was declined to club the assets, property and documents held in the name of applicant as the assets of Respondent No.3. The society has applied for deemed conveyance before the Authorities and requested all the members of the society to submit original agreement, stamp duty paid receipts of Flat No.101-B and Shop No.4 of Shri. Kunti Park Co-operative Housing Society Ltd. Military Road, Moral, Mumbai. The Investigating Officer or the Court may be directed to hand over original documents, original agreement papers, stamp duty paid receipts of Flat No.101-B and Shop No.4 to the applicant as he intends to submit his documents to the concerned Authorities for the purpose of deemed conveyance and get adjudication of this society, building property,

flats and shops etc. for registration of deemed conveyance deed. The applicant undertakes to hand over all the instruments to Respondents as and when it is received back from the society after completing the work.

4. Learned Advocate for Respondent No.1/CBI submitted that, the documents in question were seized during the course of investigation as the husband of the applicant was tried and convicted for the offence under the Prevention of Corruption Act.

5. The applicant is the wife of Respondent No.3 who was prosecuted for offences under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act and convicted vide judgment and order dated 28th August 2013. The documents of immovable property of the applicant viz. Flat No.101 “B Wing” Shri. Kunti Park, Andheri and Shop No. 4-B Kunti Park, Andheri. Registration certificate in respect to the said property were seized by Respondent. In the judgment dated 28th August 2013, the trial Court had observed that, it is difficult to hold that, the assets of the applicant were in fact assets of the accused and she was only a nominal or name sake owner thereof. There are possibilities suggesting that the assets could be acquired by her own income. The benefit of these possibilities must be given to her. The Court refused to club the assets held in the name of applicant as assets of the accused.

6. Considering the aforesaid circumstances, the relief sought in this application can be granted.

ORDER

- (i) Interim Application No. 919 of 2023 is allowed;
- (ii) The original documents of flat No. 101 B and Shop No. 4 of Shri. Kunti Park, Military Road, Marol, Mumbai be handed over to the applicant for the purpose of furnishing them to the society and after accomplishing the purpose, documents shall be re-deposited in this Court.
- (iii) The applicant shall file undertaking in this Court that as soon as the purpose for which documents are handed over is achieved, the said documents would be deposited in this Court.
- (iv) Application stands disposed off.

(PRAKASH D. NAIK, J.)