

Chaitali Ekke

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

**CRIMINAL APPEAL NO. 569 OF 2023
WITH
INTERIM APPLICATION NO. 1831 OF 2023
IN
CRIMINAL APPEAL NO. 569 OF 2023**

Vasant Dattatraya Mirajkar

Appellant /
...Org. Accused

Versus

The State of Maharashtra

...Respondent

....

Mr. Satyavrat Joshi i/b Ms. Tanvi Tapkire, for Appellant.
Ms. M. R. Tidake, APP for State.

....

CORAM : RAJESH S. PATIL, J.

VACATION COURT

DATED : 12th MAY 2023

P.C.:

1 This Criminal Appeal has been filed under section 374 of the Criminal Procedure Code challenging the judgment and order dated 21.03.2023 passed by the Sessions Judge, Sangli in Special Case (ACB) No.3 of 2013. By judgment and order dated 21.03.2023 accused was convicted under section 235 of Cr.PC. for the offence punishable under section 7 of the Prevention of Corruption Act ("P.C." for short) and was to undergo rigorous imprisonment of one year and to pay fine of Rs.2,000/-, in default to undergo further rigorous imprisonment for three months. So also for offence punishable under sections 13(1)(d) and under section 13(2) of the P.C. Act and was sentenced him to

undergo rigorous imprisonment of three years and to pay a fine of Rs. 3000/-, in default to undergo further rigorous imprisonment for four months.

2 Accordingly, Appeal is admitted.

INTERIM APPLICATION NO. 1831 OF 2023
IN
CRIMINAL APPEAL NO. 569 OF 2023

1 This Interim Application is filed for suspension of substantive sentence. The Criminal Appeal filed by the Applicant has been admitted.

2 It is the case of Applicant that he was on bail during the pendency of the trial and has been also protected by further order dated 21.03.2023 for a period of 60 days. The period of the said 60 days will end on 21.05.2023.

3 It is the case of the Applicant that he has been falsely implicated in the offence as stated in the FIR. Applicant states that on perusal of the oral evidence of the PW3-Dipendrasinh Kushwah, who was then the District Collector, Sangli and the Sanctioning Authority, it will be seen that the sanction accorded was without application of mind.

4 The Applicant states that the learned Trial Court ought to have considered the contradictions in the cross examination of PW1-

Complainant Prasad Mohite and that of examination-in-chief of PW2-Panch Amit Kumbhar and PW4-Trap Leading Officer Vijay Sarbhukan, with respect to the presence of the PW-4 and another Panch Madhusudhan Jadhav at the time of verification of demand, by the Applicant. PW1-Complainant in his cross-examination has stated that ACB officers did not follow him and PW2 Panch of the office of Applicant at the time of verification of demand which is contradicted by both PW2 and PW4, who have stated that PW4 along with Panch Madhusudhan Jadhav had followed the PW1 Complainant and PW2 Panch in another vehicle to the office of the Applicant.

5 The Applicant states and submits that the learned Trial Court ought to have considered the contradiction in the place of the alleged demand for illegal gratification in the Oral evidence of PW1-Complainant Prasad Mohite and PW2-Panch Amit Kumbhar. PW1-Complainant Prasad Mohite in his examination-in-chief has stated that they met the Applicant outside his office, whereas PW2-Panch Amit Kumbhar, accompanying the Complainant has stated in his cross-examination that they met the Applicant in his office on the first floor. The discrepancy in the place where the PW1 Complainant and PW2 Panch met with the Applicant at the time of verification of demand, casts shadow on the case of the prosecution of making the alleged demand for illegal gratification by the Applicant doubtful.

6 I am satisfied that a case is made out by the Applicant of suspension of sentence during the pendency of the trial. Therefore, prayer clause (a) of the Interim Application be allowed. Prayer (a) is reproduced hereinbelow :

“(a) Pending the hearing and final disposal of the Criminal Appeal, the order of execution of the sentence vide Judgment and order dated 21.03.2023 passed by the learned Sessions Judge, Sangli in Special Case (ACB) No. 3 of 2013 may kindly be suspended and the Applicant be released on Bail on such terms and conditions as this Hon’ble Court deems fit and proper in the nature of this case;”

7 Applicant is already furnished surety and hence hereby directed issue fresh personal bond of Rs. 15,000/-.

8 Interim Application is accordingly disposed off.

(RAJESH S. PATIL, J.)