

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1886 OF 2023
IN
CRIMINAL APPEAL NO.591 OF 2023

Vijaya Chandramohan Khot	Applicant
versus	
Central Bureau of Investigation and another	Respondents

Mr.PG.Sabnis, Advocate for Applicant.
Mr.Shreeram Shirsat, Special PP with Anna Oommen, for CBI.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th June 2023

PC :

1. The applicant is seeking suspension of sentence and grant of bail during pendency of appeal preferred by applicant challenging judgment and order dated 9th May 2023 passed by Special Judge, CBI, Greater Bombay, in Special Case No.52 of 2016.

2. The applicant (Accused no.1) has been convicted for the offence u/s.13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and sentenced to suffer imprisonment for a period of four years and to pay fine of Rs.50,000/-. The accused no.2 (husband of applicant) is convicted for offence punishable u/s.109 of IPC r/w S.13(2) r/w 13(1)(e) of P.C.Act and sentenced to suffer imprisonment of six months.

3. The prosecution case is that applicant was working as Assistant Manager in Oriental Insurance Company, Mumbai. During the period

from 1st January 2012 to 27th February 2015 she had acquired immovable and movable assets to the tune of Rs.1,36,77,840/- in her name and in the name of her family members.

4. Learned advocate for Applicant submitted as under :

(i) The sentence of imprisonment imposed by the Trial Court is of short term;

(ii) Appeal challenging the judgment of conviction will not be heard immediately. In the event sentence of imprisonment is not suspended, the appeal would become infructuous;

(iii) Applicant was on bail during trial and she has not misused the facility of bail;

(iv) Applicant has good case on merits;

(v) The applicant by giving evidence by stepping into the witness box provided explanation as to source of other income and the said deposition was largely uncontroverted by the prosecution;

(vi) The Sanctioning Authority (PW-1) has failed to prove his authority to accord sanction. Vital information was withheld from sanctioning authority;

(vii) The prosecution case suffers from serious discrepancies.

5. Learned advocate for applicant has relied on following decisions :-

(a) Bhagwan Rama Shinde Gosai and others Vs. State of Gujarat – (1999)4-SCC-421;

(b) Kiran Kumar Vs. State of M.P (JT 2000 (Supp.1)SC-208;

(c) K.C.Sareen Vs. CBI, Chandigarh (2001)6-SCC-584.

6. Mr.Shirsat, Special Public Prosecutor for CBI submitted that

there is sufficient evidence against applicant for having committed the offence which has been considered by the Trial Court while convicting the applicant. The sentence imposed upon applicant is of four years. No ground is made out for suspending the sentence. Powers u/s.389 of Cr.PC cannot be exercised in a routine manner. The applicant has not made out any case to suspend the sentence and grant of bail. The Court is required to look into the merits of the case while deciding the application for suspension of sentence.

7. Learned advocate for Respondent has relied on decision of Supreme Court in the case of Omprakash Shahi Vs. Jai Shankar Chaudhary and anr. (Criminal Appeal Nos.1331-1332/2023, decided on 2nd May 2023) and adverted to the observations of Supreme Court in the said case in relation to exercise of powers u/s.439 of Cr.PC.

8. Undisputedly applicant was on bail during trial. The applicant is in custody from the date of conviction. The substantive sentence of imprisonment imposed by the Trial Court is for a period of four years. There is no likelihood of appeal being heard immediately considering pendency of several appeals in this Court wherein appellants are in jail.

9. In the case of Bhagwan Rama Shinde Gosai and others Vs. State of Gujarat (supra), it is observed that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the Appellate Court liberally unless there are exceptional circumstances. If there is any statutory restriction against suspension of sentence, it is a different matter. Similarly,

when the sentence is life imprisonment, the consideration for suspension of sentence could be of a different approach. If for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose off the appeal on merits moreso when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the Appellate Court finds that due to practical reasons such appeals cannot be disposed off expeditiously, the Appellate Court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective.

10. In the case of Kiran Kumar Vs. State of M.P. (supra), the accused was convicted u/s.450, 376, 325, and 506 of IPC. The maximum sentence imposed on him is imprisonment for a period of seven years. He filed an appeal which was pending. The application for suspension of sentence was rejected by the High Court. The High Court had not directed the appeal to be boarded for hearing and disposal. The Supreme Court referred to the decision in the case of Bhagwan Rama Shinde Vs. State of Gujarat (supra) and observed that no exceptional reason had been shown in the impugned order for not suspending the sentence. The Apex Court suspended the sentence during pendency of appeal.

11. In the case of K.C.Sareen Vs. CBI, Chandigarh (supra), it was observed that no doubt when the Appellate Court admits the appeal filed challenging conviction and sentence for the offence under PC Act, the superior Court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof

would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal.

12. Thus, principles enunciated in the aforesaid decisions would make it clear that when a convicted person is sentenced to fixed period of sentence and files appeal under statutory right, suspension of sentence can be considered liberally unless there are exceptional circumstances. If appeal cannot be heard for practical reasons, the Appellate Court must show concern for suspending sentence. In the present case applicant has been sentenced to suffer imprisonment for a short term of four years.

13. In the recent decision of Hon'ble Supreme Court relied upon by learned Advocate for Respondent in the case of Omprakash Shahi Vs. Jai Shankar Chaudhary and anr. (supra), the Hon'ble Supreme Court has dealt with the powers u/s.389 of Cr.PC. The factual matrix of that case is that the accused was convicted for offence u/s.302 of IPC and sentenced to suffer imprisonment for life by the Trial Court. He preferred appeal before High Court. The application for suspension of sentence was allowed and bail was granted by High Court. The Apex Court referred to several decisions including Kishorilal Vs. Rupa and others (2004)7-SCC-638 wherein the Apex Court has indicated the factors that required to be considered by the courts while granting benefit u/s.389 of Cr.PC in cases involving serious offences like murder etc. The Apex Court observed that bearing in mind the principles of law laid down in decisions referred to therein, the endeavour of the Court should be to see as to whether the case of prosecution accepted by Trial Court can be said to be a case in which ultimately convict stands for fair chances of acquittal.

It was further observed that in the case in hand the High Court has done something impermissible. High Court had gone into the issues like political rivalry, delay in lodging FIR, some over-writing in FIR etc. All these aspects will have to be looked into at the time of the final hearing of appeals. From the factual matrix of the aforesaid decision, it is apparent that the Apex Court was dealing with suspension of sentence of imprisonment in serious offences like murder etc. The Apex Court also considered the grounds on which the High Court suspended the sentence of imprisonment in the case of conviction for an offence of murder. In that context and in the light of observations made by High Court and grounds considered for granting bail, the Supreme Court has observed that High Court had gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the FIR etc. All these aspects will have to be looked into at the time of final hearing of appeal.

14. Present case can be distinguished considering the fact that the applicant has been convicted and sentenced to suffer imprisonment for four years. Appeal has been preferred challenging the judgment of conviction on several grounds including the ground that sanction is defective and that applicant has stepped into witness box and explained sources of other income. In the circumstances, case for suspension of sentence and grant of bail is made out.

ORDER

- (i) Interim Application is allowed and disposed off;
- (ii) The substantive sentence of imprisonment imposed vide judgment and order dated 9th May 2023 in Special Case No.52 of 2016 by Special Judge, CBI, Greater Bombay, is suspended and applicant is directed to be released on bail on executing PR bond in

the sum of Rs.25,000/- with one or two sureties in the like amount;

(iii) Applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks in lieu of sureties;

(iv) Applicant shall report CBI, ACB, Mumbai once in six months on every first Saturday of the month between 11 to 1 pm till final disposal of Criminal Appeal.

(PRAKASH D. NAIK, J.)

MST