2024:BHC-AUG:13208

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2151 OF 2024 IN APPEAL/503/2024
AND
CRIMINAL APPLICATION NO. 2483 OF 2024 IN APPEAL/503/2024
[For suspension of sentence and grant of bail]

Anuradha Suresh Pawar,
Age 42 years, Occu: Household,
R/o Plot No. 704, Ved-mantra Apartment,
Near S.R. Petrol Pump, Pundlik Nagar,
Aurangabad, Tq. & Dist. Aurangabad. … Applicant
(Now in jail) [Accused No.2]

versus

The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION NO. 2646 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2648 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2649 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2650 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2651 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2652 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2653 OF 2024 IN APPLN/2151/2024
CRIMINAL APPLICATION NO. 2657 OF 2024 IN APPLN/2151/2024
[To assist APP to oppose suspension of sentence]

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Mr. N. B. Khandare h/f Mr. D. J. Choudhary, Advocate for the Applicant in Criminal Application Nos. 2151 of 2024 and 2483 of 2024.
Mr. K. K. Naik, APP for Respondent-State.
Mr. Gaurav L. Deshpande, Advocate for the Applicants in Applications for assist to APP.

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WITH
CRIMINAL APPLICATION NO. 2160 OF 2024 IN APPEAL/505/2024
[For suspension of sentence and grant of bail]

Suwarna Sanjay Mangate
Age 44 Years, Occu. Household,
R/o. Plot No. 269, Tejmani Bungalow,
Opp. Jain Temple, N-3, CIDCO,
Aurangabad. … Applicant
[Accused No.1]

Versus

The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION NO. 2637 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2638 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2641 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2642 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2643 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2644 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2645 OF 2024 IN APPLN/2160/2024
CRIMINAL APPLICATION NO. 2647 OF 2024 IN APPLN/2160/2024
[To assist APP to oppose suspension of sentence]

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Mr. Satej S. Jadhav, Advocate for the Applicant in Criminal Application No. 2160 of 2024.
Mr. K. K. Naik, APP for Respondent-State.
Mr. Gaurav L. Deshpande, Advocate for the Applicants in Applications for assist to APP.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.07.2024
Pronounced on : 05.07.2024

ORDER :

1. Both the applications bearing Criminal Application Nos. 2151 and 2483 of 2024 at the instance of original accused no.2, as well as Criminal Application No. 2160 of 2024 at the instance of original accused no.1, are filed invoking provisions of Section 389 of the Code of Criminal Procedure [Cr.P.C.], praying to suspend the sentence awarded by learned District Judge-4 and Additional Sessions Judge, Aurangabad dated 24.05.2024 in Special Case (MPID) No. 07 of 2019 recording guilt of applicants for offence under Sections 406 and 420 of the Indian Penal Code [IPC]. In the same applications, applicants have also prayed relief of bail during pendency of appeals preferred by them.

2. On the other hand, rest all applications are preferred by the investors seeking leave to assist learned APP in opposing the relief of suspension of sentence.

3. Heard.

4. At the threshold, learned APP has raised objection that applicants have not paid fine amount and unless it is paid, their applications cannot be heard. Arguments of both learned counsel for accused applicants as well as State were heard. Judgment of this very

Court in ***Ashvin Chinubhai Shah v. State of Maharashtra and another*** (Interim Application No. 744 of 2019 in Criminal Appeal No. 1392 of 2019 decided on 08.06.2023), puts to rest the above issue. In above appeal, this Court in para 15 has held and clarified that sentence of fine can be suspended while exercising powers under Sub-Section (1) of Section 389 of Cr.P.C.. Resultantly, taking support of the same, instant matter can be heard and decided even if fine amount directed by trial court is not deposited.

5. Applications of both the applicants are arising out of one and the same judgment and relief sought being identical, the same are dealt and decided by way of this common order.

6. So far as applications filed by the investors are concerned, for the reasons mentioned in the applications, the applicants are permitted to assist learned APP, if and when required, and those applications stand disposed of.

Criminal Application Nos. 2151 and 2483 of 2024

7. Learned counsel Mr. Khandare, representing the applicant in Criminal Application Nos. 2151 of 2024 and 2483 of 2024 would point out that applicant is a lady. Her appeal bearing Criminal Appeal

No. 503 of 2024 is pending. It is pointed out that applicant was tried for charges under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 [MPID Act] and Sections 406 and 420 of IPC. He pointed out that trial culminated into acquittal from the charge under the provisions of the MPID Act. However, learned trial court held applicant guilty for offence under Sections 406 and 420 of IPC. He emphasized that his client was on bail during entire trial. He further pointed out that, as ordered by the trial Judge, applicant has already deposited Rs.11,00,000/- when her liability is noted to be just Rs.10,10,000/-.

8. On above background, learned counsel appraised this Court about the story of prosecution in the trial court and would point out that prosecution came to be launched on the premise that accused were conducting business. They lured their acquainted persons to invest money by promising handsome returns. That, double interest was assured and believing accused, several persons, most of whom are ladies, invested huge amounts. That, there are allegations that they have intentionally and fraudulently amassed huge amount and duped alleged investors. He submitted that, it is also the case of prosecution that, there is criminal breach of trust as well as cheating to those persons.

9. Learned counsel would strenuously submit that, though prosecution came with above allegations and accusations, none of the charges of criminal breach of trust or even cheating could be made out from entire prosecution evidence. According to him, here, there was voluntary participation in the business and no false assurances or any rosy picture was painted, as is claimed by prosecution. According to him, prosecution in fact had no foundation or supportive oral or documentary evidence to substantiate the above charge. He pointed out that on one hand, prosecution came with the case that there was assurance of high returns or double returns, and second theory put forth at the same time was that there was inducement to enter into partnership. According to him, there were mere oral agreements and no documents or independent evidence about privity of contract to carry out business. That, whatever transactions had taken place, were in the form of hand loan out of long acquaintances and even prosecution witnesses themselves are testifying to that extent.

10. He further pointed out that in fact, trial court has rejected prosecution version on the point of charge under the MPID Act. Therefore, according to him, prosecution version had suffered severe blow then and there itself. He would submit that moreover,

complainant herself has admitted that there was no scheme, no agreement or no assurance of returning double amount or interest. In support of such submissions, learned counsel took this Court through the cross of the complainant. As regards to allegation of partnership business is concerned, he pointed out that there there is no written partnership deed so as to accept prosecution version to that extent.

11. Learned counsel also took this Court through the observations drawn by learned trial court, more particularly in para 15, 17, 18 and 20 and would submit that same are erroneous findings and are in absence of foundation and cogent record, and hence appeal has been preferred. According to him, it is in fact a case of no evidence. According to him, therefore, there are better and fair chances of securing acquittal in appeal which has been preferred. He further added that during trial, applicant was on bail. There is no adverse remark. That, more than the amount directed by the trial court is already deposited.

Therefore, in such background, considering the conviction only to be for offence under Sections 406 and 420 of IPC, he prays to grant relief as prayed.

Criminal Application No. 2160 of 2024

12. Learned counsel Mr. Satej Jadhav, appearing for the applicant in Criminal Application No. 2160 of 2024, adopted the above arguments advanced by Mr. Khandare, and would add that there is apparently improper appreciation by trial court i.e. both, of oral and documentary evidence. Even according to him, the essential ingredients of Sections 406 and 420 IPC were patently missing and therefore, such judgment has been taken exception to by filing appeal. Even he pointed out that his client has fairly better chance of succeeding in the appeal. He also invited attention of the court to the reasoning part of judgment. He too emphasized that his client has been acquitted of main charge of commission of offence under the MPID Act. He also invited attention of the court to the cross faced by PW1, PW2 and PW3. He specifically asserted that, there is no convincing oral or documentary evidence in support of the accusations even for attracting provisions of Sections 406 and 420 of IPC. According to him, essential components and ingredients to attract both charges are not available in the prosecution evidence and therefore, he has every hope of succeeding in the appeal. Further, according to him, his client has already deposited Rs.25,00,000/-.

13. Above applications are strongly resisted by learned APP who would point out that, witnesses who were lured to invest and who are cheated with huge amount, on realizing that they have been duped, lodged complaint and have also stepped into the witness box. Learned APP took this Court through the complaint as well as testimony of PW1 informant and other witnesses and would submit that they are all consistent. That, both applicants-accused gave false assurance of huge returns. That, to gain the trust, they have also at the initial stage, handed over cheques. Trusting accused, many ladies have parted with their hard earned earnings and deposits. Finally, There were no returns and they have lost their earnings and so they have taken recourse to law by filing complaint. He pointed out that, after gathering sufficient evidence, accused were made to face trial and on full fledged trial, their guilt has been established and affirmed for offence under Sections 406 and 420 of IPC. That, they have played fraud and cheated complainant and others. It is an economic fraud and their *modus operandi* revealed their ill intentions to dupe people. Considering the gravity of the offence and guilt being recorded, learned APP prays to reject the applications.

14. Learned counsel for intervenors also brought to the notice of this Court that, huge amounts have been swallowed. There is

deception played on investors and they are induced to part with huge amounts. It was a design since inception. He pointed out that, some of them have sold their ornaments by believing the accused. He pointed out that complainant and others have also decided to challenge the order of trial court acquitting applicants from charge attracting provisions of MPID Act. For all above reasons, he also resists the relief.

15. In the instant proceedings, Section 389 of Cr.P.C. has been invoked in support of relief of suspension of sentence and grant of bail during pendency of appeal. Both accused applicants undisputedly have challenged judgment and order passed by learned Additional Sessions Judge dated 24.05.2024 in Special Case (MPID) No. 07 of 2019 by filing distinct appeals and the same are pending.

16. Before testing the entitlement of relief, it would be profitable to give a brief account of the settled legal position and principles which are to be borne in mind while exercising powers under Section 389 of Cr.P.C.

17. Above provision not only empowers appellate court to stall and suspend sentence awarded by trial court during pendency of appeal, but also to enlarge convict on bail. It is fairly settled position that such

powers are to be exercised only when it is palpably shown that there are fair chances of success in appeal and when appellate court is more than satisfied about existence of any apparent and gross error on the face of record i.e. by the trial court while delivering the judgment. It is equally settled position that, at this stage, appellate court is not expected to undertake meticulous re-appreciation of the evidence.

Going by such precedents, which are expounded by the Hon'ble Apex Court, in numerous and series of judgments, wherein it has been held that, apart from seeing whether convict stands a fair chance of acquittal, certain other factors like gravity of offence, nature of the crime, circumstances in which offence has taken place, its impact on individual or on society, are also some of the considerations which are expected to be borne in mind while exercising powers under Section 389 of Cr.P.C.

In the case of ***Anwari Begum v. Sher Mohammad and Another*** (2005) 7 SCC 326, of which recently recourse was also taken by the Hon'ble Apex Court in the case of ***Shivani Tyagi v. State of U.P.*** 2024 LiveLaw (SC) 333, wherein the court laid down certain factors to be looked into while deciding application under Section 389 Cr.P.C., which are as under:

"i. The nature of the accusations and the severity of punishment in the case of conviction and the nature of supporting evidence.

ii. Reasonable apprehension of tampering witnesses or apprehension of threat to complainant.

iii. *Prima facie* sanctification of the court in support of the charge.

There are also other series of judicial pronouncements on above propositions and the same could be listed as ***Rama Narang v. Ramesh Narang and others*** (1995) 2 SCC 513 ; ***Rajesh Rajan Yadav alias Pappu Yadav v. CBI*** (2007) 1 SCC 70 and ***Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*** (2008) 5 SCC 230 wherein scope, object and purport of Section 389 of Cr.P.C. has been distinctly and lucidly discussed.

18. Very recently, the Hon'ble Apex Court in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary and another*** (2023) LiveLaw SC 389 has elaborately dealt with the precedent on above provision and referred cases of ***Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another*** (2012) 9 SCC 446; ***Bhagwan Rama Shinde Gosai and Others v. State of Gujarat*** (1999) 4 SCC 421; ***Hasmat*** [(2004) 6 SCC 175]; ***Vijay Kumar v. Narendra and Others*** [(2002) 9 SCC 364]; ***Atul***

Tripathi v. State of Uttar Pradesh and Others (2014) 9 SCC 177; ***Kishori Lal v. Rupa and Others*** (2004) 7 SCC 638; ***Ramji Prasad v. Rattan Kumar Jaiswal and Another*** (2002) 9 SCC 366; ***Vasant Tukaram Pawar v. State of Maharashtra*** (2005) 5 SCC 281 and ***Gomti v. Thakurdas and Others*** (2007) 11 SCC 160.

19. Keeping above settled legal position in mind, and on reverting to the facts in the case in hand, it is noticed that sum and substance of the prosecution case in trial court was that, accused persons lured and induced various persons to hand over money by way of investment, on assurance to give handsome return and higher and double rate of interest. That, they intentionally played fraud on various people by initially gaining their trust and thereafter committing criminal breach of trust and cheated many people to the tune of Lakhs of rupees. Prosecution claims that accused persons collected amount to the tune of Rs.25,95,000/- from complainant Shubhangi and other persons and finally duped them. Hence, on receipt of complaint to that extent, accused were arrested and after investigation, they were chargesheeted for commission of offence under Section 3 of the MPID Act and Sections 406 and 420 r/w 34 of IPC.

Undisputedly, trial ended up in conviction for offence under Sections 406 and 420 of IPC and accused-applicants are acquitted from charge of commission of offence under Section 3 of the MPID Act.

20. Admittedly, both accused have taken exception to above judgment by filing appeal before this court and it is during pendency of the same, relief of suspension and grant of bail is pressed into service.

21. On visiting the evidence, it is noticed that case of prosecution is rested on the evidence of almost 14 witnesses and documentary evidence comprises of RTGS slips and photocopies of cheques. Almost 12 of the witnesses seem to be so called victims and most of them are ladies. However, on cursorily going through the judgment, learned trial court in para 31 and 32 of its judgment, seems to have discussed the evidence of almost 13 witnesses and also seems to have appreciated the testimony of Investigating Officer and has recorded a finding that there is no document suggesting formation of an association, floating any scheme to invite deposits and investments. That, but there is evidence about hand-loan, sharing profit or loss and issuance of cheques by way of security. Consequently, learned trial

Judge recorded a finding that prosecution failed to establish commission of offence under Section 3 of MPID Act, but as regards to point nos. 2 and 3, findings are in affirmative regarding commission of offence under Sections 420 and 406 of IPC, and the said findings are now under consideration in appeal.

22. Operative part of the judgment shows that accused Suwarna is sentenced to suffer 7 years imprisonment for offence under Section 420 of IPC and 3 years imprisonment for offence under Section 406 of IPC. Similarly, accused Anuradha is also sentenced for similar term for each of the above offences.

23. After giving thoughtful consideration to the submissions, nature of accusations and even findings reached at by learned trial court, it is noticed that both accused are ladies. Learned trial Judge has already given them clean chit from offence punishable under the MPID Act. Guilt is recorded for commission of offence under Sections 406 and 420 of IPC, but it is pertinent to note that, learned trial Judge has clearly recorded finding that there is evidence suggesting transaction of hand-loan, sharing of profit and loss and issuance of cheques by way of security. If it is so, then, there is only offence of breach of trust and cheating and admittedly, no other offence is made out.

24. Resultantly, considering the above findings of trial court and also considering the fact that applicants are ladies, and further, even as per trial court's judgment para 74, they seem to have already deposited Rs.25,00,000/- and Rs.20,00,000/- respectively, coupled with the fact that appeals are recently filed and same would take some more time to be heard and decided, they are entitled for relief as claimed.

ORDER

I. Criminal Application No. 2151 of 2024 and Criminal Application No. 2483 of 2024 in Criminal Appeal No. 503 of 2024 are allowed.

II. Criminal Application No. 2160 of 2024 in Criminal Appeal No. 505 of 2024 also stands allowed.

III. The substantive sentence imposed on both applicants i.e., Anuradha Suresh Pawar and Suwarna Sanjay Mangate in Special Case (MPID) No. 07 of 2019 by District Judge-4 and Additional Sessions Judge, Aurangabad dated 24.05.2024 stands suspended till the final hearing and disposal of Criminal Appeal No. 503 of 2024 and Criminal Appeal No. 505 of 2024 preferred by respective applicants.

IV. The applicants be released on P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two solvent sureties in the like amount.

V. The applicants shall not commit any criminal activity.

VI. The applicants shall remain present before the learned trial Judge once in three months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.

VII. In case of two consecutive defaults on the part of the applicants to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of bail granted to the applicants.

VIII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]

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