2024:BHC-AUG:25898-DB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

**CRIMINAL APPLICATION NO.1892 OF 2024
IN
CRIMINAL APPEAL NO.443 OF 2024**

Sanjay Champalal Bora .. Applicant

Versus

The State of Maharashtra .. Respondent

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Shri. Jagdish V. Deshpande & Shri. S. N. Dudhate, Advocates for the Applicant

Shri. S. V. Hange, APP for the Respondent / State.

Shri. V. H. Dighe a/w. Shri. R. N. Patil, Advocates for Assist to P.P.

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**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 15.10.2024
PRONOUNCED ON : 22.10.2024**

FINAL ORDER (*Per* NEERAJ P. DHOTE, J.)

. This is the Application under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for Suspension of Sentence awarded by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 convicting the Applicant and Co-convicts for the offences punishable under Sections 420, 465, 467, 471 r/w. Section 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and Section 120B of the I.P.C. The Applicant is Sentenced to suffer Imprisonment for Life for the offence punishable under Sections 465, 467, 471 and

120B of the I.P.C. and term Sentences with fine for the offence punishable under Section 420 of the I.P.C.

2. Heard the learned Advocate for the Applicant and the learned A.P.P. for the Respondent / State assisted by the learned Advocate for Liquidator / Patsanstha. Perused the papers available on record.

3. It is the Prosecution's case, as can be seen from the Impugned Judgment that, the Patsanstha was registered as the financial institution on 23.02.2001. As on 31.03.2010, there were total 1047 members having shares valued at Rs.19,30,700/-. There were around 25008 depositors and deposits worth Rs.15 Crore and Odd. In addition to the said deposits, the Patsanstha was having deposits around Rs.39 Crore and Odd. The founder Chairman, Proprietors and Manager were the trustees. The Head Office of the Patsanstha was at Chitale road, Ahmednagar and having branches at different places. There were other office holders and employees of the said Patsanstha. The Patsanstha, by resolution dtd.22.05.2011, resolved for conducting the statutory audit of the Patsanstha for the financial year 2009-2010. The Prosecution Witness No.20 – Devram Maruti Baraskar was appointed by the Competent Authority to conduct the same.

4. The said Auditor conducted the audit of the Patsanstha from 16.06.2011 to 08.07.2011. During the audit, he examined the documents of the Patsanstha at the head office and the branches. He prepared the Audit Report at Exh.994 stating that the Directors, Managers and certain Borrowers in collusion with each other committed misappropriation of funds of Patsanstha to the tune of Rs.13,38,55,667/- (Rs. Thirteen Crore Thirty Eight Lakh Fifty Five Thousand Six Hundred Sixty Seven). The Audit Report was submitted to the concerned authority under the Maharashtra Co-operative Societies Act (hereinafter referred to as the 'Societies Act'). On the basis of the said Audit Report, the Crime bearing CR No.266/2011 came to be registered with the Kotwali Police Station, Ahmednagar on 01.08.2011 for the offence punishable under Sections 177, 409, 417, 420, 465, 467, 468, 471, 120B of the I.P.C. and for the offence punishable under Section 3 of the MPID Act, alleging that many irregularities were done in the Patsanstha while distributing loans which were sanctioned to the relatives and friends without security and irregularities in distribution of loans against gold and there was misappropriation of funds of Depositors and there was violation of rules and regulations in distributing the loans to the Borrowers.

5. On completion of the investigation, Charge-sheet came to be submitted and was registered as the above referred Sessions Case. The concerned authority under the Maharashtra Co-Operative Societies

Act (hereinafter referred to as the 'Societies Act') suspended the Managing Committee of the Patsanstha and appointed Administrator by Order dated 06.09.2011 and directed the enquiry under Section 88 of Societies Act and appointed the Enquiry Officer. On completion of the Trial, the Applicant along with the Charge-sheeted Accused came to be convicted and Sentenced by the impugned Judgment and Order.

6. It is submitted by the learned Advocate for the Applicant that the Applicant was the Borrower. He was acquitted of the offence punishable under Sections 177, 406, 409 of the IPC and for the offence punishable under Section 3 of the MPID Act. The Applicant repaid the loan and wrong amount to the tune of Rs.16 Lakh and Odd was shown outstanding against the Applicant. The Applicant has deposited Rs.20 Lakh in this Court. There is no evidence of forgery against the Applicant. Being the Borrower, the conviction for criminal conspiracy is unfounded. Only relation between the Patsanstha and the Applicant is that of Lender and Borrower. The punishment imposed by the learned Trial Court was completely disproportionate. The Application be allowed by Suspending the Sentence of the Applicant and the Applicant be released on bail.

7. It is submitted by the learned APP assisted by learned Advocate for Liquidator / Patsanstha that, the Applicant availed 27 gold loans. The entire gold pledged against the loan was fake. The Applicant

never attempted to repay the loan, though it is the case of the Applicant that he repaid the loan. The evidence on record goes to show that the Applicant had intention to cheat the bank. The Application, therefore, be rejected.

8. The Applicant is Accused No.14. The Applicant is the Borrower of the said Patsanstha. The case of the Prosecution entirely rests on the Audit Report prepared by PW20 – Devram Maruti Baraskar. The observations in the impugned Judgment show that, in the FIR, the Auditor i.e. PW20 – Devram Maruti Baraskar mentioned outstanding balance of Rs.22,74,315/- as against the Applicant, which was mentioned on the basis of list supplied by the Manager and he (PW20 - Devram Maruti Baraskar) further admitted that when he carried the inspection of the account of the Applicant, there was no outstanding balance as referred above against the Applicant and he admitted that he mentioned wrong figure in the FIR. It is further observed by the learned Trial Court that PW20 -Devram Maruti Baraskar submitted that, whatever stated by him in Para No.44 of his examination-in-chief in respect of account extracts Exh.568, 569, 570 and 571, was incorrect. The Applicant has deposited Rs.20 Lakh in this Court in the civil Writ Petition pending before the learned Single Bench arising out of the enquiry under Section 88 of the Societies Act. The Sentence imposed by the learned Trial Court *prima facie* appears to be disproportionate.

There is no likelihood that the Appeal would be heard finally in the near future. In the facts and circumstances as against the Applicant and the above aspects, we are inclined to allow the Application and proceed to pass the following order.

ORDER

(i) The Criminal Application is allowed.

(ii) The substantive Sentence imposed by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 on the Applicant namely Sanjay Champalal Bora, is Suspended during the pendency of the present Appeal.

(iii) The Applicant namely Sanjay Champalal Bora be released on bail on furnishing P.R. Bond of Rs.30,000/- [Rupees Thirty Thousand Only], with one or more surety/ sureties in the like amount.

(iv) Bail before the Trial Court.

(v) The Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.) **(R. G. AVACHAT, J.)**

GGP