IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.193 OF 2024

The State of Maharashtra **...Applicant**

V/s.

Rajendra Kisanrao Shirsath and Anr. ***...Respondents***

Mr. Ajay Patil , *APP for the Applicants-State.*

Mr. Sanjeev Kadam *with Mr. Prashant Raul, Ms Varsha Thorat and Mr. Pratik Deshmukh i/b. Mr. Mayur Govind Sanap for the Respondents.*

Mr. Rajesh L. Jagade, PI, ACB, Thane, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 August 2024.

P.C.:

1) The State Government has filed this Revision Application challenging order dated 26 May 2023 passed by the Additional Sessions Judge, Belapur allowing the application filed by Respondents /accused for discharge from Special Case ACB No.656/2023.

2) I have heard Mr. Patil, the learned APP appearing for the Applicant-State and Mr. Kadam, the learned counsel appearing for the Respondents.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, in my view, there are atleast two reasons why no interference is warranted in the impugned order

passed by the learned Sessions Judge. Firstly, there appears to be a glaring error on the part of the Investigating Officer in preparing the chart reflecting income and expenditure of accused No.1 during check period. The Investigating Officer has taken the total salary of accused No.1 during cheque period September 1998 to March 2015 at Rs.34,88,432/-. In column No.2 the Investigating Officer has stated that 33% of gross salary would be considered as the expenditure incurred by accused No.1. If 33% of Rs.34,88,432/- is computed, the figure would be Rs.11,51,182/-. The Investigating Officer has however, taken the figure of expenditure at Rs.17,37,884/-, which is way higher than 33%. In my view, if correct computation was to be made, the expenditure of accused No.1 for the check period would fall to Rs.11,51,182/- and therefore, even if the other heads are not to be disturbed or altered, percentage of the disproportionate assets would fall below 10%.

4) Secondly, the Investigating Officer has clubbed the income and expenditure of accused No.2(wife of accused No.1) without appreciating the fact that accused No.2 had independent business and source of income. She is not public servant. She was filing income tax returns in respect of business conducted by her. Therefore, it is erroneous on the part of the Investigating Officer to club income of accused No.2 with Accused No.1. In fact, FIR shows that chart of accused No.2 is independent (स्वतंत्र). Once it is held that the mismatch between income and expenditure between accused No.1 is less than 10%, it becomes questionable as to whether income and expenditure of accused No.2, which has been considered independent from that of accused No.1, would constitute any offence on the part of any of the accused.

5) Apart from the above two aspects, there are several other reasons recorded by the learned Judge for ordering discharge. I am

therefore, not inclined to interfere in the impugned order. The Revision Application is accordingly **rejected**.

[SANDEEP V. MARNE, J.]