IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2210 OF 2024
IN
CRIMINAL APPEAL NO.591 OF 2024

Hemant Govind Thorat & Anr. .... Applicants

versus

State of Maharashtra & Anr. .... Respondents

…….

- Mr. Sudeep Pasbola, Senior Advocate a/w Rohin R. Chauhan i/b. Rahul Arote, Advocate for Applicants.
- Mr. Swapnil V. Walve, APP for the State/Respondent.
- Mr. Kuldeep S. Patil, Advocate for CBI/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th AUGUST, 2024

P.C. :

1. The Applicants were the original accused in Special (ACB) Case No.3/2014. Both of them were convicted for commission of offence punishable u/s 8 of Prevention of Corruption Act, 1988 and were sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.1,00,000/- each and in default of payment of fine, to suffer simple imprisonment for 2 months. They were convicted for commission of offence

punishable u/s 120-B of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 6 months and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer simple imprisonment of 15 days. Set off for the period undergone between 03/05/2013 to 06/06/2013 was given to the Applicant. This case was decided by the Special Judge, CBI-ACB, Pune, on 07/06/2024.

2. Heard Mr. Sudeep Pasbola, Senior Advocate, learned counsel for the Applicant, Mr. Kuldeep S. Patil, learned counsel for the Respondent No.2 and Mr. Swapnil V. Walve, learned APP for the State.

3. The prosecution case is that P.W.2 was an accused in the case in respect of a search conducted by CBI at his house Daund, Pune on 23/02/2013. The Applicant No.1 was an Advocate and the Applicant No.2 was his clerk. The allegations are that under the pretext of removing P.W.2's wife's name from the case and in order to obtain anticipatory bail order, and to

pay bribe to the concerned officers including the public prosecutor, the Applicant No.1 obtained Rs.28,95,000/- from P.W.2. Out of which, Rs.2,00,000/- was his fees. Rest of the amount was to be used as bribe to be paid to the public servants. P.W.2 complained to the Investigating Officer and the investigation was carried out. The Applicants were arrested. The investigation was completed and the Applicants faced the trial. During the trial, the Applicants were on bail.

4. Learned counsel for the Applicants submitted that the only evidence against the Applicants was in the nature of ocular evidence of P.W.2, the complainant in this case and his wife P.W.3. There is no direct evidence showing that the P.W.2 had actually made payment to the Applicants. The prosecution case is that the P.W.3 i.e. the wife of the complainant had withdrawn certain amount from the joint bank account. That amount was used in making the payment to the Applicants.

5. Learned Senior counsel Mr. Pasbola submitted that

there is no direct proof showing that said amount was actually handed over either by P.W.2 or P.W.3 to either of these Applicants. Apart from that, Mr. Pasbola submitted that the prosecution has relied on certain writing made by the Applicant No.1 in a dairy. The said entry mentions the name of the complainant P.W.2 and certain figures i.e. Rs.15,00,000/-, 50,000/- and Rs.10,000/-. These are the only pieces of incriminating circumstances against the present Applicants and they do not prove the prosecution case beyond reasonable doubt. He submitted that the Applicants were on bail during trial and they have not misused that liberty. There are no other cases against the Applicants. The incident is old and allegedly the offence was committed in the year 2013. He submitted that this prosecution was wrongly initiated by P.W.2 because he was holding a grudge against the Applicant No.1 as P.W.2 could not get a favourable order in the Anticipatory Bail Application. Therefore, the Applicants are falsely implicated.

6. Learned counsel for the CBI Mr. Patil submitted that

the offence is serious because the amount was taken from P.W.2 on the pretext of paying that amount to higher public officials. Therefore, the offence assumes importance. He submitted that the writing made by the Applicant No.1 itself shows that big amount was taken by him, otherwise there was no reason for such writing to be found in his diary. He further submitted that the withdrawal of amount by the P.W.3 was around the same period and therefore, there is direct nexus between the withdrawal of that amount and the payment made to the Applicants.

7. I have considered these submissions. The points raised by both the parties will have to be considered seriously at the final hearing stage. However, the sentence imposed on the Applicant is for 5 years. The Appeal is not likely to be decided during that period. The Applicants were on bail during trial. They have not misused the same. There are no other criminal antecedents against them. Therefore, the Applicants can be granted bail during the pendency of their Appeal.

8. Hence, the following order :

ORDER

(i) During the pendency and final disposal of the Criminal Appeal No.591 of 2024, the Applicants are directed to be released on bail on their furnishing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each, with one or two sureties each, in the like amount.

(ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)