IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3579 OF 2024
IN
CRIMINAL APPEAL NO.970 OF 2024

Mohan Janardan Ghadge …..Applicant
Versus
Union of India, through CBI,
ACB, Mumbai and another ….Respondents

Mr. Madhusudan Pareek, Advocate for the Applicant.

Mr. Shreeram Shirsat, Spl.P.P. a/w. Karishma Rajesh, Shekhar Mane for the Respondent No.1-CBI.

Mr. Vinit A. Kulkarni, APP for the Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 09th SEPTEMBER, 2024

P.C. :

1. The Applicant – Mohan Ghadge was the original accused No.1 in CBI Special Case No.100/2011 before the Special Court for CBI at Greater Bombay. The learned Judge, vide his judgment and order dated 28.8.2024, convicted and sentenced the Applicant and the original accused No.2 for commission of the offences punishable under Sections 420 and 120-B of IPC. He was sentenced to suffer RI for five years and to

pay fine of Rs.25,000/- and in default of payment of fine to suffer SI for six months, for commission of the offence punishable under Section 420 of IPC. He was sentenced to suffer RI for three years and to pay fine of Rs.15,000/- and in default of payment of fine to suffer SI for six months, for commission of the offence punishable under Section 120-B of IPC. The substantive sentences were directed to run concurrently. He was given benefit under Section 428 of Cr.P.C. The Applicant was acquitted from the charges of committing offence punishable under Sections 467, 468, 471 of IPC and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 as well as under Section 43 read with 66 of the Information Technology Act. The Applicant was granted set off under Section 428 of Cr.P.C. The Applicant was in jail during investigation for a period of approximately three months.

2. Heard Mr. Madhusudan Pareek, learned counsel for the Applicant, Mr. Shreeram Shirsat, learned Special Public Prosecutor for the Respondent No.1-CBI and Mr. Vinit Kulkarni, learned APP for the Respondent No.2-State.

3. The prosecution case is in respect of a fraud committed in the year 2009-2010. The allegations are that some fake refunds were deposited in the bank accounts of some persons who had not filed any Income Tax Returns asking for refunds. All these disbursements of refunds was fraudulent and in all the amount of Rs.5.3 Crores were disbursed. The allegations are that some of the officers from the Income Tax Department were involved in these disbursements. For that purpose, some PAN cards of some of the witnesses, examined by the prosecution in this case, were used. The amount had gone in their accounts, from where it was withdrawn and distributed amongst themselves by the accused. There were in all eight accused. Out of them, accused Nos.3, 4, 5 and 6 were the Income Tax Officers and Public Servants. The others, including the Applicant, were the private persons.

4. The case of the prosecution is that the Applicant – accused No.1 Mohan Ghadge had represented to some witnesses that they could get some amount in their accounts either by way of loan or for helping the Income Tax Officers in settling the

accounts. Some amount was deposited in their accounts accordingly, from where it was withdrawn. As far as the accused No.2 Dilip Vyas is concerned, he was concerned with one witness i.e. PW-19 and representation was made to this witness that accused No.2 could get a loan from a *Patpedhi* for him; and thus around Rs.10 Lakhs were deposited in that witness's account from where the said amount was withdrawn.

5. The FIR was lodged in the year 2010. The period of fraud was between June,2009 to February, 2010. The FIR was lodged on 4.2.2010. During the trial, the prosecution examined 54 witnesses, including some of the witnesses, whose bank accounts were used, the pancha witnesses, handwriting expert and the investigating officers. At the conclusion of their trial, all the other accused, except accused Nos.1 & 2, were acquitted.

6. Learned counsel for the Applicant – Mohan Ghadge submitted that the fraud was not committed by any private person single handedly. The Income Tax Officers were involved, but, all of them were acquitted. Therefore, the learned Judge committed an error in convicting the Applicant – Mohan Ghadge.

There could not have been any offence without the aid of the Public Servants. The commission of the offence without involvement of Public Servant in this case was an impossibility. The learned Judge has not given due consideration to this aspect. The Applicant had no access to the Income Tax Department. He had no access to the Password or identity of the Assessing Officers. In fact, the password of PW-5 and his User ID was used, as per the prosecution case. The Applicant – Mohan Ghadge has no connection with these allegations. During entire investigation, no recovery was effected from him. The money trail did not lead to him. The Applicant was in custody for a period of almost three months and yet there is no further connection shown by the investigating agency as far as the Applicant – Mohan Ghadge is concerned.

7. Learned Special P.P. submitted that PW Nos.8, 9, 14, 17 and 18 have deposed about the role played by the Applicant Mohan Ghadge. He submitted that the *modus operandi* used by the Applicant Mohan Ghadge was that he represented to these witnesses that some amount would come in their account either

by way of loan or because some Income Tax Officers wanted to settle the accounts. These witnesses were not required to repay that loan amount and the money came in their accounts could simply be withdrawn. Accordingly, certain amount was deposited in their accounts and were withdrawn. Some amount was left in their accounts. He, therefore, submitted that the role of the Applicant – Mohan Ghadge is proved by the prosecution. Said amount is around Rs.90 Lakhs.

8. I have considered these submissions. As submitted by learned Special P.P., the amount which is attributed to the part played by the Applicant – Mohan Ghadge was around Rs.90 Lakhs. However, significantly there was absolutely no recovery from the Applicant – Mohan Ghadge at all. The Applicant was in custody for about three months during the investigation. This is an important aspect.

9. Apart from that there is substance in the submissions of learned counsel for the Applicant- Mohan Ghadge that all these five witnesses i.e. PWs-8, 9, 14, 17 and 18 had played some active part in the entire episode and yet, they are merely

shown as witnesses and they are not made accused. The money has come in their accounts and they had enjoyed some amount. Therefore, since they were the direct beneficiaries, they should have been made an accused. In that connection their statements will have to be considered from that perspective. It is also significant that all the Public Servants arraigned as accused in this case are acquitted.

10. As rightly submitted by learned counsel for the Applicant – Mohan Ghadge, the fraud was not possible without involvement of some Public Servants. Therefore, there is substance in the submission of learned counsel for the Applicant that the prosecution was not completely successful in proving its case.

11. The Applicant – Mohan Ghadge was on bail during the trial for about almost fourteen years. There are no allegations of misusing that liberty. The sentence imposed on him is comparatively small i.e. for five years. The Appeal is not likely to be decided within that period considering the volume of the evidence and number of witnesses examined by the

prosecution. Therefore, it would not be proper to deny bail to the Applicant – Mohan Ghadge during pendency of his Appeal. The Applicant, therefore, deserves to be released on bail during pendency of his Appeal.

12. Hence, the following order:

<u>O R D E R</u>

(i) During pendency and final disposal of the Criminal Appeal No.970/2024, the Applicant is directed to be released on bail on his executing a P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

(ii) The Applicant shall deposit his passport, if any, with the investigating agency before being released on bail.

(iii) Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR PRAKASHRAO DESHMANE

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