IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3593 OF 2024
IN
CRIMINAL APPEAL NO.973 OF 2024

Dilip Badrinarayan Vyas …..Applicant
Versus
Union of India, through CBI,
ACB, Mumbai and another ….Respondents

Mr. Anil D. Joshi, 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 – Dilip Vyas was the original accused No.2 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.1 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 grantd 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. Anil Joshi, learned counsel for the Applicant, Mr. Shreeram Shirsat, learned Special P.P. 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 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.2 Dilip Vyas 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. As far as the accused No.1 Mohan Ghadge is concerned, he 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.

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 – Dilip Vyas submitted that he was in custody for three months and there is no recovery at his instance at all. The prosecution has not shown any money trail leading to the Applicant's account or to show that he was a beneficiary in any manner. Compared to the entire

amount of Rs.5.3 Crores, the allegations against the Applicant Dilip Vyas are only in respect of one witness i.e. PW-19 and the amount involved is Rs.10 Lakhs which is comparatively a small amount.

7. Learned Special P.P. accepted that only PW-19 has deposed against the Applicant – Dilip Vyas i.e. the accused No.2 and there was no recovery from him.

8. I have considered these submissions. As rightly submitted by learned counsel for the Applicant – Dilip Vyas, only one witness i.e. PW-19 has deposed against him for amount of Rs.10 Lakhs, which in the context of the allegations, is comparatively a small amount. Even that amount is not recovered. There is no money trail leading to the Applicant, shown by the investigating agency. The Public Servants are acquitted. Therefore, to that extent the prosecution has failed to prove its case against the Public Servants. The offence could not have been committed without the active participation of some Public Servant in refunding the amount even to PW-19. The Applicant was on bail during trial for almost fourteen years.

There are no allegations of misusing that liberty. The sentence imposed on him is five years, which is comparatively a short sentence during which period the Appeal is not likely to be decided considering the volume of the prosecution evidence and the number of witnesses. Therefore, it will not be proper to deny bail to the Applicant during pendency of his Appeal.

9. Hence, the following order:

ORDER

(i) During pendency and final disposal of the Criminal Appeal No.973/2024, 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.

PRADIPKUMAR PRAKASHRAO DESHMANE

(SARANG V. KOTWAL, J.)

Digitally signed by PRADIPKUMAR PRAKASHRAO DESHMANE
Date: 2024.09.11 16:57:24 +0530