



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.432 OF 2024

[Dilip S/o Rambhao Algunwar ..Vs.. The State of Maharashtra]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr S. V. Sirpurkar, Advocate for Applicant/Appellant.
Ms S. Dhote, APP for Non-Applicant/State.

CORAM : M. W. CHANDWANI, J.

DATE : 29th APRIL, 2024.

. Heard.

2. By the present application, the applicant is seeking suspension of substantive sentence passed by the learned Special Judge, Chandrapur, in Special (ACB) Case No.12 of 2015. By the impugned judgment and order dated 25.09.2023, the applicant has been convicted for offence punishable under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988. The maximum sentence awarded to the accused is of rigorous imprisonment for five years.

3. It is contended on behalf of the applicant that the applicant had earlier filed an application for suspension of sentence, however, the same came to be withdrawn. While the applicant is undergoing sentence, he suffered serious cardiac arrest, and thereafter, he was operated for mitral valve replacement. After surgery, he requires bed rest for two months. The learned counsel for applicant submits that various follow ups are required to be taken post surgery else,

there are chances of reoccurring of heart attack. According to him, the conviction is for a fixed term of five years. The Panch witness became hostile to the prosecution case. Hence, he seeks suspension of sentence.

4. The learned Additional Public Prosecutor opposed the application on the ground that earlier the application for suspension of substantive sentence has already been withdrawn by the learned counsel for applicant. The learned APP submits that the mitral valve replacement has not been disputed and the care of the applicant is being taken in jail, therefore she seeks rejection of the application.

5. It appears that after filing of the appeal, the application came to be moved for suspension of substantive sentence, which came to be withdrawn, and thereafter, appeal was fixed for final hearing. For one or other reason, the matter could not be heard finally. Meanwhile, the applicant was operated for mitral valve replacement. There is no dispute that various follow ups and precautions are required to be taken for some time after surgery. Considering this aspect and coupled with the fact that the applicant is convicted for a fixed term of five years, the case is made out for suspension of substantive sentence. Hence, the following order.

ORDER

- i) The criminal application is **allowed**.
- ii) Pending the appeal, the substantive sentence passed by the learned Special Judge, Chandrapur, in

Special (ACB) Case No.12 of 2015, *vide* judgment and order dated 25.09.2023, shall remain suspended.

iii) The applicant – Dilip Rambhao Algunwar be released on bail on his furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the like amount.

6. The criminal application is disposed of accordingly.

CRIMINAL APPEAL NO.657 OF 2023

7. List the matter for final hearing after summer vacation.

(JUDGE)