



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

CRIMINAL APPLICATION (APPA) NO.1130 OF 2023 IN
CRIMINAL APPEAL NO.697 OF 2023

Amol Jagannath Dhake Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri R.R. Vyas, Advocate for appellant.
Shri H.D. Dubey, APP for respondent/State.

CORAM : M.W. CHANDWANI, J.
DATE : MARCH 27, 2024.

The application seeks suspension of substantive sentence in MPID M.A. Others No.1/2015 (Special Criminal Case No.1/2015) passed by the Additional Sessions Judge, Nagpur.

2. The appellant has been convicted for the offence punishable under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 and sentenced him to suffer rigorous imprisonment for four years and to pay fine of Rs.50,000/-. The appellant has also been convicted for the offence under section 45-IA punishable under section 58-B (4A) and for the offence under section 45-S punishable under section 58-B(5A) of the Reserve Bank of India Act, 1934 and sentenced him to suffer rigorous imprisonment for three years and one year respectively, apart from the fine amount. The appellant has also been sentenced for the offences punishable under sections 406 and 409 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and four years respectively with fine amount. The trial Court ordered that all the sentences to run concurrently.

3. Heard learned counsel for the appellant as well as learned Additional Public Prosecutor for respondent/State.

4. It is contended on behalf of the learned counsel for the appellant that the appellant has been acquitted of the offence punishable under section 420 of the Indian Penal Code. According to him, there is no discussion that default was due to inability arising out of impracticable or commercially not viable promises made by the appellant while accepting the deposits. He submits that the appellant promised to pay interest at the rate of 1.5% per month, which comes to 18% per annum. He submits that the appellant has invested the amount in the share market. Mutual funds also give return at the rate of more than 18% per annum therefore, in the present set of facts, the promises made by the appellant cannot said to be impracticable or commercially not viable promise. Therefore, according to him, the appellant has a good case on merit. The appellant was cooperating in the investigation and he himself offered to attach his property worth of crore. Considering the conduct of the appellant, he deserves suspension of sentence. The appellant has already undergone the sentence for one and half years. Therefore, he seeks suspension of sentence.

5. Per contra, learned APP for the State vehemently opposed the application on the ground that the amount of Rs.2,77,89,000/- is involved. The appellant has promised to pay the interest, in some cases at the rate of 25% per annum and in some cases double of the amount. He submits that the appellant has no case on merit. Hence, sought rejection of the application.

6. Having gone through the record, it appears that the appellant himself offered his house to be attached which is of more than a crore. Even the appellant has refunded some amount to the investors. The appellant was on bail during the trial. The appellant did not misuse the liberty while he was on bail. The appellant has already undergone the sentence for about one and half years. The conviction is of a fixed term of four years. The hearing of the appeal will take considerable time. In case the appellant succeeds in the appeal, the position will be irreversible.

7. Considering the submissions of the learned counsel for the appellant, an arguable case is made out on merits to scrutinize the prosecution evidence at the time of hearing of appeal.

8. In view of above, a case is made out for suspension for suspension of substantive passed in MPID M.A. Others No.1/2015 (Special Criminal Case No.1/2015) passed by the Additional Sessions Judge, Nagpur. Hence, the following the order.

ORDER

- i. The application is allowed.
- ii. Pending appeal, the substantive sentence imposed by the Additional Sessions Judge, Nagpur in MPID M.A. Others No.1/2015 (Special Criminal Case No.1/2015) shall remain suspended.

iii. The appellant – Amol Jagannath Dhake shall be released on bail on he executing PR bond the sum of Rs.50,000/- with one solvent surety in the like amount.

iv. The appellant shall not leave India without permission of the trial Court.

v. The appellant shall remain present at the time of final hearing of the appeal.

With this, the application stands disposed of.

9. List the appeal for final hearing, as per its turn.

JUDGE

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