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

CRIMINAL APPLICATION (APPA) NO.725/2024
IN
CRIMINAL APPEAL NO.406/2024
Jawaharlal s/o Shrilal Dubey and ors
..vs..
The State of Maharashtra, through Anti Corruption Bureau, Amravati, Taluka and District Amravati

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

Shri A.S.Mardikar, Senior Counsel assisted by Shri Harsh Kanjwani, Adv. for the Applicant.
Mrs.Kavita Bhondge, Additional Public Prosecutor for the Non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 14/10/2024
PRONOUNCED ON : 17/10/2024

1. By this application, applicants (appellants) are seeking Stay to Operative Part at Clause No.10 of judgment dated 6.7.2024 passed by learned Special Judge under the Prevention of Corruption Act and Additional Sessions Judge, Amravati in Special Case ACB No.11/2005.

2. Appellant No.1 is convicted for offence punishable under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 (the PC Act) vide Section 248(2) read with

235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1.00 lac, in default, to suffer further rigorous imprisonment for six months.

He is further convicted for offences punishable under Sections 2 read with 3 of the Benami Transactions (Prohibition) Act, 1988 vide Section 248(2) read with 235(2) of the Code and sentenced to suffer rigorous imprisonment for six months and to pay fine Rs.1000/-, in default, to suffer further rigorous imprisonment for 15 days.

3. Appellant Nos.2, 3 and 4 were convicted for offence punishable under Section 109 of the Indian Penal Code read with 13(2) of the PC Act vide Section 248(2) read with 235(2) of the Code and sentenced to suffer rigorous imprisonment for one year each and to pay fine Rs.50,000/- each, in default, to suffer further rigorous imprisonment for three months each.

They were also convicted for offence punishable under Section 109 of the Indian Penal Code read with 2 and 3 of the Benami Transactions (Prohibition) Act under Section 248(2) read with 235(2) of the Code and sentenced to suffer rigorous imprisonment for three months each and to pay fine Rs.500/- each, in default, to suffer rigorous imprisonment for seven days.

While imposing sentences, learned Judge below further directed that appellant No.1, appellant No.2, appellant No.5, and appellant No.6 were directed to deposit Rs.50.00 lacs jointly and severally in the court in lieu of forfeiture/attachment of property within two months from the date of passing of the judgment impugned.

4. It is submitted by appellants that learned Judge below relied upon deposition of the investigating officer, but has not considered that properties were actually purchased on loan and now the said properties are not in possession of appellants, but with the concerned bank due to non repayment of loan amount. The conviction of appellants is based on evidence of the investigating officer. Besides the evidence of the investigating officer, there is no other evidence to show that appellants have earned disproportionate assets by illegal activities. Learned Judge below ought to have considered that

now the entire properties are forfeited and in possession of the concerned bank, however, imposed condition that they shall deposit Rs.50.00 lacs in lieu of forfeiture/attachment of property within two months from the date of the judgment impugned and the amount be credited to the Government after appeal period is over.

5. Heard learned Senior Counsel Shri A.S.Mardikar for appellants and learned Additional Public Prosecutor Mrs.Kavita Bhondge for the State.

6. Learned Senior Counsel for appellants submitted that the entire judgment impugned is based on the evidence of the investigating officer. Besides his evidence, there is absolutely no material to substantiate contention that appellants have earned disproportionate assets. The said properties, allegedly purchased by appellants accepting illegal gratification or by illegal activities, are already forfeited and no income source is left with appellants to pay the said amount. It is neither a part of fine nor a part of compensation under Section 357 or 357A of the Code (Old Act). Thus, the judgment impugned directing to

deposit the amount is itself illegal and, therefore, that condition requires to be Stayed.

7. Learned Additional Public Prosecutor for the State supported the judgment impugned passed by learned Judge below.

8. It is well settled that Stay to conviction shall be granted only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice. A duty cast on the Court is to see as to what appropriate punishment may be imposed on person having regard to peculiar facts and evidence tendered in that case. The catena of decisions would demonstrate that some exceptional circumstances are required to be shown by applicant who approached the Court for Stay of his conviction.

9. In the present case, appellants have requested only to Stay the condition by which learned Judge below directed to deposit amount Rs.50.00 lacs.

10. Perusal of the judgment impugned shows that, admittedly, learned Judge below relied upon evidence of the

investigating officer to hold appellants guilty. Insofar as condition No.10 is concerned, there is no reasoning by learned Judge below as to why the said condition was imposed on appellants.

11. It is well settled that Stay is to be granted in exceptional cases. The exceptional circumstances do not mean that something extraordinary is to be demonstrated by appellants. It would be sufficient if it is shown that some important material evidence is not considered by learned Judge below which may tilt balance in favour of the accused and also that requisite care has not been taken by learned Judge below at the stage of sentencing.

12. As far as the present application is concerned, as already observed, no appropriate reasoning is given by learned Judge below while imposing the said condition. It is neither a part of fine nor a part of compensation.

13. It is submitted and pointed out that appellants have every chance of success in the present appeal. The properties, allegedly purchased and termed as disproportionate assets, are

obtained by securing loan. The said properties are already seized and in possession of the bank as there is no repayment against the loan and, therefore, there is no possibility that appellants are in a position to alienate the said properties and for securing interests of the Government, the amount was directed to be deposited.

14. Considering a fact that the entire assets are already seized and in possession of the bank, there is no apprehension as to the alienation of the said properties. In view of that, the application for Stay to clause No.10 of the operative order of the judgment impugned deserves to allowed, as per order below:

ORDER

(1) The Criminal Application is **allowed**.

(2) Operative Part at Clause No.10 of judgment dated 6.7.2024 passed by learned Special Judge under the Prevention of Corruption Act and Additional Sessions Judge, Amravati in Special Case ACB No.11/2005 imposing that appellant Nos.1, 2, 5, 6 shall deposit Rs.50.00 lacs jointly and severally in Court in lieu of forfeiture/attachment of property is hereby **stayed,** till

disposal of the appeal.

(3) The appellants shall not deal with properties by alienating or creating charge by way of gift or mortgage or in any other manner.

Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!