

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1569 OF 2025
IN
CRIMINAL APPEAL NO.428 OF 2025**

Damodar Raghvendra Kamath

...Applicant

Vs.

Union of India and Anr.

..... Respondent

Mr. Madhusudan Pareek for the Applicant.

Ms. Rashmi Tendulkar APP for the State.

Mr. Shreeram Shirsat, SPP a/w Ms. Antara Kulkarni for Respondent
CBI.

CORAM : ASHWIN D.BHOBE, J.

DATE : 2nd JUNE, 2025.

(VACATION COURT)

PC. :

1. Heard Mr. Madhusudan Pareek, learned Advocate for the Applicant. Mr. Shreeram Shirsat, learned Special P. P. for the Respondent No.1 and Ms. Rashmi Tendulkar learned APP for the State.

2. Applicant was arrayed as Accused No.6 in CBI Special Case No.109 of 2013, before the Court of the Special Judge (CBI) Greater Bombay ("learned Special Judge" for short).

3. Vide judgment and order dated 17.04.2025, the learned Special Judge has convicted the Applicant for the offences punishable under

Section 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988 and under Section 420 r/w 120 (b) of the Indian Penal Code. Applicant has been sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.15,00,000/-, in default to undergo simple imprisonment for three months.

4. Criminal Appeal No.428 of 2025 filed by the Appellant is admitted on 08.05.2025.

5. By the present application, the Applicant has sought for the following order:

“a) That this Hon’ble Court may be pleased to release the present applicant on bail till the final disposal of the Appeal arising out of CBI Special Case No. 109 of 2013 on same bail fresh bond or on such terms and conditions as this Hon’ble Court may deem fit and proper;

b) This Hon’ble court may further be pleased to suspend the order of sentence imposed upon the applicant in CBI Special Case No. 109 of 2013 til the final disposal of the Appeal arising out of said case;”

6. Mr. Madhusudan Pareek, learned Advocate for the Applicant submits that the Applicant was taken into custody on 17.04.2025 upon he being convicted and since then he is in custody. He submits that during the pendency of the CBI Special Case No.109 of 2013, the Applicant was on bail and he has abided by the conditions of the said bail. He submits that the Applicant was regular in his appearance

during the Trial. He submits that the Appeal is admitted and it may take some time for disposal of the same. He further submits that the Applicant has a good case to succeed on merits, as such continuation of the Applicant in custody during the pendency of the Appeal would result in prejudice to the Applicant. He submits that the Applicant has deposited the fine of Rs.15,00,000/- before the Court of the learned Special Judge, by Demand Draft dated 19.05.2025 and points out to the affidavit dated 20.05.2025 at Exhibit-X Colly. He, therefore, prays that the present application be allowed on terms and conditions, as deemed fit and proper by this Court.

7. Mr. Shreeram Shirsat, learned Special P. P. for Union of India, submits that the offence which is subject matter of CBI Special Case No. 109 of 2013 is a serious offence. He submits that the learned Special Judge after considering the entire case, material and evidence brought on record, has convicted the Applicant. He submits that no case is made out by the Applicant for suspending the sentence. He submits that powers under Section 430 of BNSS cannot be exercise in a routine manner and this Court would have to consider merits of the case while deciding the application for suspension of sentence. He relies on the judgment of the Hon'ble Supreme Court in the case of

Omprakash Sahni Vs. Jai Shankar Chaudhary and Anr.¹.

8. Ms. Rashmi Tendulkar, learned APP for the Respondent No.2 adopts the arguments of Mr. Shreeram Shirsat.

9. I have heard the learned Advocates for the parties and perused the records with their assistance.

10. In the case of Omprakash Sahni Vs. Jai Shankar Chaudhary (supra), the Hon'ble Supreme Court has considered the powers under Section 389 of Cr.P.C., while considering an appeal against conviction under Section 302 of IPC. In paragraph No.33 and 34, the Hon'ble Supreme Court after referring to various earlier pronouncement has observed as under:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

¹ (2023) 6 SCC 123

34. In the case on hand, what the High Court has done is something impermissible. The High Court has gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the first information report, etc. All these aspects, will have to be looked into at the time of the final hearing of the appeals filed by the convicts. Upon cursory scanning of the evidence on record, we are unable to agree with the contentions coming from the learned Senior Counsel for the convicts that, either there is absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour. For the very same reason we are unable to accept the contention coming from the convicts through their learned Senior Counsel that, it would be meaningless, improper and unjust to keep them behind the bars for a pretty long time till they are found not to be guilty of the charges.”

11. This Court while considering the case of Mr. Vijaya Chandramohan Khot Vs. Central Bureau of Investigation and Anr.² was considering a case of a convict punished for the offences under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988, wherein the sentence of imprisonment awarded was of four years, distinguished the decision in the case of Omprakash (supra) by observing that the case before the Hon’ble Supreme Court was conviction for murder whereas the Vijay Khot (supra) was a case wherein, the sentence imposed was four years. Sentence imposed in the case of Vijay Chandramohan Khot was therefore, suspended pending the hearing of the Criminal Appeal No.591 of 2023.

² IA No.1886 of 2023 in Criminal Appeal No.591 of 2023

12. This Court in the case of Dr. Anand Prakash Mittal Vs. Central Bureau of Investigation and Anr.³, in facts similar to the case of Vijay C. Khot (supra), wherein the conviction was under the Prevention of Corruption Act, 1988 and sentence of imprisonment was of four years, the same was suspended, pending the hearing of appeal.

13. Perusal of the Impugned judgment in the context of the grounds as raised in the memo of appeal, prima facie indicate the Applicant having a fair chance to succeed on merits.

14. In view of the above and considering the sentence of imprisonment is of five years, the Applicant having abided by the condition of bail during the trial, I am inclined to follow the decisions of this Court in the case of Vijay C. Khot (supra) and Dr. Anand Prakash Mittal (supra).

15. In view of the above, Interim Application No.1569 of 2025 is allowed on the following terms:

a) During the pendency of the Criminal Appeal No.428 of 2025, the sentence of imprisonment imposed vide judgment and order dated 17.04.2025 passed by the learned Special Judge, CBI greater Mumbai in CBI Special Case No. 109 of 2013 is suspended and the Applicant is

³ IA No.4740 of 2024 in Criminal Appeal No.1215 of 2024

directed to be released on bail on executing PR bond in the sum of Rs.25,000/-, with one or more sureties in the like amount.

b) The Applicant is permitted to furnish cash surety in the sum of Rs.25,000/- for a period of four weeks in lieu of sureties. Applicant shall furnish the regular surety on or before the expiry of the period of four weeks.

c) The Applicant shall deposit his passport before the Investigation Officer CBI, EOB Mumbai, within one week of his release.

d) The Applicant shall report to the Investigation Officer, on the 5th day of every month before the Investigation Officer CBI between 10.00 am to 1.00 pm. and on any other day if required by the Investigation Officer.

e) Applicant shall furnish his residential address and contact details /Mobile number to the Investigation Officer CBI.

f) The Applicant shall remain present before this Court as and when the Criminal Appeal No.428 of 2025 is listed.

16. The **Interim Application is disposed off.**

[ASHWIN D.BHOBE, J.]