

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1878 OF 2025
IN
CRIMINAL APPEAL NO.533 OF 2025

Rajendra Eknath Nerkar
Versus
The State of Maharashtra

...Applicant

...Respondent

Mr. Sanjay Kadam, Senior Advocate *a/w Mr. Vishal Kolekar, Siddharth Wakode, Harshavardhan Patil and Harsharaj Jagtap for the Appellant.*

Mr. Mayur S. Sonawane, for the Applicant.
PI Suhas Hattekar, ACB, Mumbai.

CORAM : ADVAIT M. SETHNA, J.

DATE : 13 MAY 2025
(VACATION COURT)

P.C.:

1. This is an application filed by the applicant-original accused no.1 praying for suspension of sentence against the order of conviction dated 6 May 2025 passed by the learned Special Judge, under Prevention of Corruption Act, City Civil and Sessions Court for Greater Bombay, Mumbai in ACB Special Case No.91 of 2014 as also the release of the applicant on bail. The applicant held the post of Assistant Regional Transport Officer (RTO).

2. Mr. Kadam, learned Senior Counsel for the applicant would at the very outset submit that though this is a case arising under the provisions of Section 7 read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, the principal ingredient of offence under the said law i.e. the demand of

the alleged bribe is not proved. He would submit that equally there is no proof of acceptance as the alleged bribe by the applicant. It was so received by the accused no. 2 – one Mr. Dalvi and not by the present applicant, according to Mr. Kadam, he has been enlarged on bail by the Sessions Court, Mumbai vide an order dated 6 May 2025 after being convicted by the learned Sessions Court for a period of three years under the provisions of Prevention of Corruption Act.

3. Mr. Kadam, learned Senior Counsel would draw the Court's attention to the evidence in cross-examination of PW1 – the then Under Secretary in the Home Department recorded before the trial Court on 6 September 2018. He would submit that the sanction for removal of the applicant from the post of ARTO is not by the competent authority as mandated in law. This, according to Mr. Kadam, would go to the root of the matter. In this regard, he would place reliance on a judgment of this Court dated 1 July 2008 in **The State of Maharashtra vs. Ramchandra Sudam Ingale**¹ on this issue to support his submission. The Court held that the sanction accorded by the authority not competent to issue the sanction order is not legal and valid. Accordingly, the accused was acquitted.

4. Mr. Kadam would submit that the applicant has during the trial being substantially out on bail. He is a senior citizen suffering from certain medical ailments. He would rely on medical reports in that regard which have been annexed to the Interim Application. He would submit that there are no complaints against the applicant when on bail during the time of trial. He would accordingly submit that considering the facts and circumstances, sentence be

1. Criminal Application No. 633 of 2006.

suspended and the applicant be enlarged on bail.

5. Mr. Mayur Sonawane, learned APP would strongly oppose interim application. He would fairly submit that there are no complaints against the applicant while he on bail during the trial. He would submit to the orders of the Court.

6. Having perused the judgment of the learned Sessions Court dated 6 May 2025, it would be necessary to reproduce the relevant extract of the operative order which reads thus:-

- “1. Accused Nos. 1 Rajendra Eknath Nerkar is convicted under Section 235(2) of Cr.P.C. for the offences punishable under Section 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988.*
- 2. Accused No.2 Jayprakash Moreswar Dalvi is convicted under Section 235(2) of Cr.P.C. for the offence punishable under Section 12 of the Prevention of Corruption Act, 1988.*
- 3. Accused No.1 Rajendra Eknath Nerkar is sentenced to suffer Rigorous imprisonment for a period of 3 years and to pay a fine of 50,000/-(Rupees Fifty Thousands Only). In default of payment of fine, he shall suffer further Rigorous Imprisonment of six months for offence punishable under section 7 of the Prevention of Corruption Act, 1988.*
- 4. Accused No.1 Rajendra Eknath Nerkar is sentenced to suffer Rigorous imprisonment for a period of 4 years and to pay a fine of 50,000/-(Rupees Fifty Thousands Only). In default of payment of fine, he shall suffer further Rigorous Imprisonment of six months for offence punishable under sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.”*

7. From the material on record, there is no clear role and/or involvement attributed to the applicant and in regard to allegation of demand of bribe and the receipt of such bribe, qua the applicant. In my view, the applicant has made

out a *prima facie* case. His submission regarding the issue of sanction is also noted as supported by a judgment (*supra*) of this Court, which has not been controverted by the prosecution. The prosecution has not been able to point out any material to the contrary, at this stage.

8. The Court agrees with Mr. Kadam that the trial Court has imposed a short sentence of four years. Equally the appeal is not likely to be decided in the near future. Mr. Kadam has also submitted that the entire amount of fine of Rs.1,00,000/- has been deposited before the learned Sessions Court on 6 May 2025, in due compliance of the order, to that extent.

9. Considering the submissions advanced and after perusal of record, the Court finds substance in the submissions made by Mr. Kadam at this stage on the prayer for suspension of sentence of the applicant. Accordingly, the following order is passed:-

ORDER

- (i) Interim Application No.1878 of 2025 is allowed.
- (ii) The sentence imposed by the learned Special Judge, ACB, Mumbai in Special Case No.91 of 2014 vide judgment and order dated 6 May 2025 is hereby quashed and set aside.
- (iii) The Applicant - Rajendra Eknath Nerkar shall be released on bail in C.R.No.29 of 2014 registered by Anti-Corruption Bureau, Mumbai, for the offences punishable under Section 7 read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, on his furnishing P.R. Bond in the sum

of Rs.1,00,000/- with one or more sureties in the like amount in the City Civil and Sessions Court, Mumbai.

- (iv) The applicant shall furnish his latest mobile number and current detailed address to the concerned Investigating Officer and change, if any be accordingly informed in writing to the Investigating Officer.
- (v) During the pendency of the Appeal, Applicant is directed to attend office of Respondent No. 1 on every first Monday of the month initially for a period of 1 years and thereafter as and when called for/required by the investigating officer.
- (vi) Application is disposed of in the above terms.
- (vii) Parties to act upon an authenticated copy of this order.

[ADVAIT M. SETHNA, J.]