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

CRIMINAL APPLICATION NO.24 OF 2025
IN
CRIMINAL APPEAL NO.21 OF 2025
(Mr. Vijay S. Hedaoo Vs. State of Maharashtra)

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

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Mr. S.V. Sirpurkar, Advocate for the appellant.
Mr. P. Sathianathan, Special Public Prosecutor for the respondent.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 23, 2025.

By this application, the appellant is seeking suspension of sentence and releasing him on bail.

2. The appellant was prosecuted of the offence punishable under Sections 420, 465, 467, 468, 471, 408 read with Section 120-B of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in Crime No.RC4/E/2011, CBI, EOW, MUM, Nagpur (Urban), Nagpur (Special Case No.2/2012).

3. The facts of the case shows that as per the directions of Superior Officer, the informant - D.S. Reddy, being then Assistant General Manager, Zonal Office of Allahabad bank, Nagpur had conducted internal investigation of the disputed 8 Housing Loan Accounts which were turned to NPA. The loans were sanctioned by accused No.1 - then Senior Manager in connivance with accused No.2 - then Assistant Manager of the Allahabad

Bank. Those disputed loans were granted to 8 individual borrower - purchaser of the house in the proposed construction scheme of developer i.e. M/s. Kalinda Infrastructure, Mahadula, Koradi, Tahsil Kamptee, District Nagpur in Plot no.44, at Kh.No.110/1 to 3. Accused No.3, Rajesh and Nilesh were the partners of said partnership firm and accused No.3 was the active partner. All those 8 loan transactions were processed by accused Nos.1 and 2 allowing borrowers and developers to open accounts in the Bank. Accused Nos.1 and 2 released total loan of Rs.85 Lakhs to those 8 borrowers as public housing loan. The entire amount was withdrawn by the developer i.e. accused No.3 for M/s. Kalinda Infrastructure. It further reveals during the investigation that it was the present accused who was Assistant Manager at the relevant time, has sanctioned the loan without considering the documents and without ascertaining whether there is any charge on the said documents. The CBI initiated the investigation and after completion of the investigation, submitted charge-sheet against the appellant. After full fledge trial Special Judge, CBI Court held the present appellant guilty of the offence punishable under Section 420 read with Section 120-B of IPC, and sentenced to suffer Rigorous Imprisonment for 4 years and to pay fine of Rs.2 Lakhs (Rs. Two Lakhs only). In default he shall further undergo Rigorous Imprisonment for 2 years. He is further convicted of the offence punishable under Sections 465, 467, 468, 471, 408 read with Section 120-B of IPC and Section 13(1)(d) r/w. S. 13(2) of the Prevention of Corruption Act, 1988. The maximum punishment imposed was of a 4 years and total fine amount of Rs.11,50,000/-.

4. It is submitted by the learned Counsel for the appellant that the punishment imposed is of a limited period. As far as the entire allegation against the present appellant and the evidence on record is considered, at the most attributes the negligence on the part of the present appellant; however, learned Special Court has not considered the same and sentenced him as aforesaid. It is submitted that the appeal would take its own time for its final disposal. In the meantime, if sentence is executed the purpose of preferring the appeal would frustrate. In view of that, he be released on bail and the execution of sentence be suspended. By this application, the appellant further prays for stay to the recovery of the fine amount.

5. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs. Ashok Sirpal in Criminal Appeal No.4277 of 2024 decided on 24/10/2024***.

6. *Per contra,* learned Special Public Prosecutor for the CBI strongly opposed the application on the ground that the appellant has not deposited a single penny towards the fine amount. He further submitted that the evidence which is adduced by the prosecution sufficiently shows the involvement of the present

appellant not only in disbursing the loan amount but also in preparing the forged documents as well as using the forged document as a genuine one, and therefore, he is convicted. He submitted that appeal can be disposed of finally.

7. I have heard learned Counsel for both the sides. Perused the entire record from which it reveals that the present appellant accused is charged for the offence punishable under Sections 420, 465, 467, 468, 471, 408 read with Section 120-B of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. As per the allegation, the present appellant entered into the conspiracy with the other co-accused, prepared the forged documents and the said documents are used as a genuine document and with the help of the forged documents the loan amounts was disbursed to the rest of the accused. As far as the issue of the suspension of sentence is concerned, at this stage, re-appreciation of the evidence is not permissible. What is to be seen is whether the appellant is successful in pointing out that he has chance of success in the present appeal. Moreover, punishment imposed is of a limited period. Considering these facts the appellant has made out a case by pointing out that he has many arguable points in the present appeal. The next submission of the present appellant is that total amount of Rs.34,50,000/- to be deposited by him towards the fine amount and the appellant is not in a position to deposit the said amount,

and therefore, the condition should not be imposed to deposit the fine amount while considering the suspension of sentence.

8. Learned Counsel placed reliance on ***Central Bureau of Investigation Vs. Ashok Sirpal*** (supra) wherein the Hon'ble Apex Court has extensively dealt with the consideration as to the application under Section 389 of Cr.P.C. and held that the power of suspension of sentence under Section 389 of the Cr.P.C. (Corresponding to Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is vested in the Appellate Court dealing with an appeal against the order of conviction. On a plain reading of subsection (1), the Appellate Court has the power to suspend the execution of a sentence or order appealed against. If the appellant/accused is in confinement, there is a power vesting in the Appellate Court to release him on bail pending the final disposal of the appeal. In case of offences covered by the first proviso to subsection (1) of Section 389, there is a mandate to give an opportunity to the Public Prosecutor to show cause in writing against such release before releasing a convicted person on bail. As stated earlier, the substantive sentence imposed on the respondent is rigorous imprisonment for seven years. In addition, there is a direction to pay a fine of Rs.95,00,000/. There are five kinds of punishment provided in Section 53 in Chapter III of the IPC, which reads thus:

> *"<u>53. "Punishments</u>".—The punishments to which offenders are liable under the provisions of this Code are—*
>
> *First—Death;*
> *Secondly—Imprisonment for life;*
> *Thirdly— [* * *];*
> *Fourthly—Imprisonment, which is of two descriptions, namely: —*
>
> *(1) Rigorous, that is, with hard labour;*
>
> *(2) Simple;*
>
> *Fifthly—Forfeiture of property;*
> *Sixthly—Fine."*

Section 64, which is a part of the same chapter III, reads thus:

> *"**64. Sentence of imprisonment for non-payment of fine-** In every case, of an offence punishable with imprisonment as well as fine, in which **the offender is sentenced to a fine**, whether with or without imprisonment,*
>
> *and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,*
>
> *It shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence."*

Sections 4 and 8(2) of the Bharatiya Nyaya Sanhita, 2023, are the corresponding Sections. Section 64 of IPC uses the expression 'offender is sentenced to a fine'. Moreover, the fine is one of the five punishments provided in Section 53. Thus, it is evident that the direction to pay a fine issued against the convicted accused is also a sentence. Under Section 64, the Court is empowered to direct that in default of payment of the fine, the offender shall suffer imprisonment for a specific term as directed therein. Therefore, there can be a sentence of fine and a further sentence in default of compliance with the sentence of fine.

9. By referring the judgment of ***Satyendra Kumar Mehra v. State of Jharkhand [(2018) 15 SCC 139]***, the Hon'ble Apex Court held as under:

> *"36. We, however, make it clear that the appellate court while exercising power under Section 389 CrPC can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the appellate court while exercising jurisdiction under Section 389 CrPC. The appellate court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine."*

The Hon'ble Apex Court further held that while suspending the sentence, especially the sentence of fine, the Appellate Court can impose conditions. Whether the order of suspension of the sentence of fine should be conditional or unconditional depends on the facts of each case and especially the nature of the offence. For example, when there is a sentence of fine imposed while convicting an accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, depending upon the facts of the case, the Appellate Court may impose a condition of depositing the fine amount or part thereof while suspending the sentence. However, the approach of the Court may be different in case of offences punishable under the IPC and cognate legislations. Whenever a prayer is for suspension of the sentence of fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions. However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it. Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Article 21 of the Constitution.

10. As far as the law regarding suspension of sentence is concerned it is well settled that re-appreciation of the evidence at the stage of suspension of sentence is not permissible. What is to be seen is that whether the appellant has any grounds to show that he has fair chances of acquittal. What is to be looked into is something palpable. 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.

11. As far as the present case is concerned, from the impugned judgment learned Counsel has pointed out that he has many arguable points. At the same time, the punishment which is imposed is of a limited period. Considering all these facts, as far as substantive sentence is concerned which can be suspended considering the punishment is of a limited period and the appeal would take its own time for its final disposal. As far as the suspension of the fine amount is concerned, considering the involvement of the present appellant from the impugned judgment is in preparing the forged documents and using it as a genuine one. Thus, involvement of the present appellant is in economic offence. However, considering the appellant is an employee of the bank, it would not be possible for him to deposit the amount of Rs.11,50,000/- in lump sum as a fine amount, and therefore, it would be appropriate if he deposits the amount of Rs.2,00,000/- against the fine amount. The appellant is convicted in three cases and total fine amount comes to Rs.34,50,000/-. It would be appropriate to give direction to the appellant to deposit Rs.2,00,000/- against the fine amount of Rs.11,50,000/- in each case.

12. In the facts of the case, the total sentence including substantive sentence and sentence in default of fine has to be suspended on condition that out of fine

amount of Rs.11,50,000/- he shall deposit minimum fine amount of Rs.2,00,000/-. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 31/12/2024 passed by the Special Judge, CBI Court, Nagpur in Special Case No.02/2012 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Mr. Vijay S. Hedaoo be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five thousand) with one surety, in the like amount.

(iv) The appellant shall deposit the fine amount of Rs.2,00,000/- within six weeks.

13. The application stands disposed of.

CRIMINAL APPEAL NO.21 OF 2025

Heard.

2. Appeal is already admitted.

3. R. & P. is yet to be received

4. Place the appeal before the Court after preparation of the paper book and after receipt of the R. & P.

(URMILA JOSHI-PHALKE, J.)

**Divya*