

CASE NO.:  
Appeal (crl.) 558 of 2005

PETITIONER:  
Vasant Tukaram Pawar

RESPONDENT:  
State of Maharashtra

DATE OF JUDGMENT: 15/04/2005

BENCH:  
Arijit Pasayat & S.H. Kapadia

JUDGMENT:  
JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Refusal by the Bombay High Court, Aurangabad Bench to accept the prayer of the appellant, for suspension of sentence and to be released on bail while admitting the appeal filed by him, is questioned in this Appeal.

Factual background facts in a nutshell are as follows :

The appellant faced trial for alleged commission of offence punishable under Section 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act'). The allegation against the appellant was that he was in possession of property worth Rs. 4,12,297 which was disproportionate to his known sources of income. Appellant faced trial in the Court of Special Judge, Dhule in Special Case No. 77 of 1996. After considering the available materials on record, the trial court held that the accused-appellant was in possession of assets disproportionate to his known sources of income. The conclusion was arrived at after taking note of the pecuniary resources of the accused - appellant. The trial court held that the extent of the disproportionate assets amounted to Rs. 3,10,784. Accordingly, he was convicted for offence punishable under Section 13(1)(e) read with Section 13(2) of the Act. He was sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 1,00,000 with default stipulation. In confiscation proceedings certain properties were forfeited to the State Government and these properties had been attached during trial. Against the conviction and sentence appeals have been filed before the Bombay High Court. Prayer for bail was made primarily on the ground that the evidence was not sufficient to show that the alleged assets acquired were beyond the known sources of income. It was pointed out that the accused was on bail during trial and considering his age, (he was nearly 66 years), he ought to be released on bail. In essence, the prayer was for suspension of the sentence and grant of bail. The High Court noted that this was not a fit case where it would be desirable to release the appellant on bail during pendency of the appeal and to suspend the order of conviction and sentence as prayed for. It was noted that the fine imposed had not been deposited. Further, on consideration of materials on record the amount of disproportionate assets has been worked out. However, the hearing of the appeal was directed to be expedited.

In support of the appeal, learned counsel for the appellant submitted that the fine of Rs. 1,00,000 imposed by the trial court had not been deposited at the time the High Court considered the application. But the amount has been deposited subsequently. This was one of the factors indicated for not accepting the prayer for bail. The minimum sentence prescribed is one year and the appellant has suffered custody for nearly 10 months. The trial court has not considered the relevant aspects and has erroneously come to the

conclusin that the appellant was in possession of assets disproportionate to the known sources of income.

In response, learned counsel for the respondent-State submitted that the evidence has been analysed in great detail by the trial court and considering the rampant corruption which is prevalent in the society today no leniency should be shown to the appellant. Additionally it is pointed out that in Special Case No. 99 of 1996 the appellant faced trial with two others and has been convicted for offences punishable under Sections 13(1)(c), 13(1)(d) read with Section 13(2) of the Act as well as Sections 120 and 409 of the Indian Penal Code, 1860 (in short the 'IPC'). He was sentenced to undergo rigorous imprisonment of four years and fine for the offence relatable to Section 120(B) IPC. He was also sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,00,000 with default stipulation for the offence punishable under Section 409 read with Section 120 (B) IPC. He was convicted for the offence punishable under Section 13(1)(c) read with Section 13(2) of the Act read with Section 120(B) and sentenced to undergo imprisonment for two years with fine. Similar was the sentence for the offence punishable under Section 13(1)(d) read with Section 13(2) read with Section 120(B) IPC. In this background it was submitted that this is not a case where any interference is called for.

Learned counsel for the appellant submitted that the conviction in the other case was not one of the factors considered for rejecting the prayer.

Section 389 of the Code of Criminal Procedure, 1973 (in short the 'Code') deals with "Suspension of execution of sentence pending the appeal and release of the appellant on bail". There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389, is the requirement of the Appellate Court to record reasons in writing for order of suspension of execution of the sentence or an order of release if the accused is in confinement. The said court can direct that he be released on bail or on his own bond. Requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

We find that one of the reasons which weighed with the High Court was that fine imposed has not been deposited. Same has been subsequently deposited. Further, the relevance of the forfeiture of the attached property has not been considered. We, therefore, direct the High Court to re-consider the application. While doing so, the effect and relevance of the order of conviction and sentence passed in S.C. 99 of 1996 shall be considered. We make it clear that we have not expressed any opinion on the merits of the case. The High Court, in view of its order dated 15.6.2004 may explore the possibility of disposal of the appeal by the end of 2005.

The appeal is accordingly disposed of.