

Sanjiv Kumar @ Rajinder Kumar vs Central Bureau Of Investigation Cbi on 5 September, 2023

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

\$~2

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A. 370/2023 & CRL.M.(BAIL) 611/2023
SANJIV KUMAR @ RAJINDER KUMAR

Through: Mr. Abhishek Ku
Himanshu Panw

versus

CENTRAL BUREAU OF INVESTIGATION CBI

Through: Ms. Anubha Bhar

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA
ORDER

% 05.09.2023 [The proceeding has been conducted through Hybrid mode] CRL.M.(BAIL)
1100/2023

1. This is an application under Section 389 Cr.P.C. r/w Section 482 Cr.P.C., 1973 seeking suspension of sentence to the applicant/appellant during the pendency of the criminal appeal bearing number CRL.A. 370/2023.

2. Mr. Kukkar, learned counsel appearing for the appellant/applicant submits that the applicant has been sentenced vide order of sentence dated 02.03.2023 in CC No.265/2019 as follows:-

(i) RI for 5 years for offences under Section 120-B read with Sections 419/420/467/471 read with 468, IPC, 1860 and Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 along with fine of Rs.2,50,000/- in default SI for 6 months.

(ii) RI for 1 year for offence punishable under Section 419 IPC.

(iii) RI for 3 years for offence punishable under Section 420 IPC along with fine of Rs.50,000/- in default SI for 4 months.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18

(iv) RI for 5 years for offence punishable under Section 467 IPC along with fine of Rs.75,000/- in default SI for 6 months.

(v) RI for 3 years for offence punishable under Section 471 r/w Section 468 IPC along with fine of Rs.10,000/- in default SI for 2 months.

All the sentences shall run concurrently.

3. Learned counsel for the applicant submits that the case of the applicant is similar to the case of co-accused persons namely Mr. Pramod Garg and Swaran Singh Malhi whose applications under Section 389 (1) r/w Section 482 Cr.P.C., 1973 were allowed by this Court on 26.07.2023 in Crl.A. 256/2023 and 02.08.2023 in Crl.A. 230/2023 respectively.

4. Learned counsel submits that the applicant in the present case is similarly situated and circumstanced, as the co-accused Pramod Garg in the aforesaid criminal appeal except the fact that the present applicant has been convicted of substantive offences under the Prevention of Corruption Act, 1988 like in the case of Swaran Singh Malhi.

5. Learned counsel submits that the disposal of the criminal appeal would take some time keeping in view the board of this Court. He also submits simultaneously, that the judgment of this Court in Pramod Garg vs. Central Bureau of Investigation Crl.A. 256/2023 dated 26.07.2023 as also the judgment of the Hon'ble Supreme Court in the case of Bhagwan Rama Shinde Gosai & Ors. vs. State of Gujarat delivered on 12.05.1999 in Crl.A. No.554/1999 are favourable to the appellant/applicant, on the basis whereof appellant's This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 sentence may be suspended during the pendency of the instant appeal.

6. Per Contra, Ms. Anubha Bhardwaj, learned SPP for respondent-CBI submits that through the appellant/applicant has already been convicted however, the role played by the appellant/applicant insofar as the offences are concerned is one of the primary accused persons and it was on the availability of sufficient incriminatory evidence, that the conviction had been upheld.

7. Ms. Bhardwaj, learned SPP submits that this Court, at the time of hearing of the appeal, would consider the fact whether there is enough incriminating evidence against the appellant/applicant and keeping that in regard, she submits that the sentence of the appellant/applicant should not be suspended.

8. Moreover, learned SPP submits that the appellant/applicant has undergone sentence for a period six month only, out of the 5 years RI, as imposed by the learned Trial Court. She further submits that the judgment of the Coordinate Bench of this Court in the case of Pramod Garg and other co-accused persons, suspending the sentence of the applicants therein may not be taken into consideration since the role of co-accused persons is different from the present applicant.

9. Learned SPP submits that the role of the applicant in the present case is different from that of Mr. Pramod Garg and others since an account was opened only for a very short period of three days and the applicant Sanjiv Kumar @ Rajinder Kumar impersonated as a person in whose name the plot was allotted.

10. Ms. Bhardwaj, learned SPP also submits that the applicant has been sentenced to substantive offences unlike in the case of Mr. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 Pramod Garg though, the applicant is not a public servant.

11. That apart, Ms. Bhardwaj also relies upon the judgment of Supreme Court in Preet Pal Singh Vs. State of Uttar Pradesh and Another reported in (2020) 8 SCC 645 whereby the Supreme Court has distinguished the considerations which a Court ordinarily ought to take while considering the applications under Section 439 Cr.P.C. on one hand and Section 389 Cr.P.C., 1973 on the other.

12. This Court has considered the submission of Mr. Kukkar, learned counsel appearing for the applicant/appellant as also learned SPP for CBI.

13. It is not disputed that the other co-accused persons, namely, Pramod Garg and Swaran Singh Malhi have already been released on suspension of sentence arising from the same RC and thus, there is no reason why the same cannot be made applicable to the present applicant.

14. It would be apposite to extract the paragraphs 25, 26 and 35 of the judgment of the Supreme Court in the case of Preet Pal Singh (Supra) relied upon by Ms. Bhardwaj, learned SPP as under:-

"25. Section 389 provides that, pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against, be suspended and, also, if he is in confinement, that he be released on bail. Of course, in view of the mandate of Section 389(3) CrPC, the principles are different in the case of sentence not exceeding three years and/or in the case of bailable offences. In this case, of course, none of the offences for which Respondent 2 has been convicted are bailable.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 Moreover, Respondent 2 has, inter alia, been given life imprisonment for offence under Section 304-B IPC and imprisonment for five years for offence under Section 3 of the Dowry Prohibition Act.

26. As the discretion under Section 389(1) is to be exercised judicially, the appellate court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in *Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291 and *Babu Singh v. State of U.P.*, (1978) 1 SCC 579.

XXXXXX

35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P.*, (2018) 3 SCC 22. However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 mandated in Section 389(1) CrPC."

15. This Court has considered the aforesaid judgment of the Supreme Court and there is no quarrel with respect to the considerations, this Court ought to keep in view, whenever any such bail application or an application seeking suspension of sentence is filed.

16. In the present case too, it is not doubted that in respect of all the other co-accused persons, sentences have been suspended on various dates by this court.

17. Even in the case of Swaran Singh Malhi who is alleged to be the main co-accused person, this Court vide the order dated 02.08.2023 in CrI.A. 230/2023 has already suspended the sentence. Though the roles may be differently attributed to all the accused persons, however, the fact which needs consideration of this Court is that all other co-accused persons other than the present applicant have already been released on account of suspension of their sentences. It would thus be unjust to deny the present applicant the directions for suspension of sentence keeping in view the aforesaid factual matrix.

18. That apart, the judgment of Hon'ble Supreme Court in Bhagwan Rama Shinde Gosai (supra) does give qualified guidelines to the High Courts to consider suspension of sentence wherever the sentence is for a fixed period. More so, when the Court itself is under consideration that the appeal would take its own time to be heard and considered. It would be apposite to extract paras 3 and 4 of the said order passed by the Hon'ble Supreme Court:-

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 "3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.

4. In this case as the High Court was not inclined to hear the appeal expeditiously we are of the view that the sentence passed on the appellants can be suspended on some stringent conditions. We, therefore, suspend the sentence and direct the appellants to be released on bail on each of them executing a bond to the satisfaction of the Additional Sessions Judge, Nadiad. We direct the appellants to report to Kapadwang Police Station on all Mondays and Thursdays between 4.00 p.m. and 6.00 p.m. until disposal of the appeal pending before the High Court."

19. A careful consideration of the reasoning given by the Hon'ble Supreme Court leads to the conclusion that in cases as the present one, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 where sentence of a limited period has been awarded, coupled with the fact that the appeal will take its own time for consideration, suspension of sentence can be granted, subject to stringent conditions.

20. Keeping in view the aforesaid facts and circumstances of the case as also the order of Coordinate Bench of this Court and the ratio laid down by the Hon'ble Supreme Court in Bhagwan Rama Shinde Gosai (supra), this Court is of the considered opinion that the conviction of the appellant/applicant can be suspended since the appeal will take some time to reach on the board for consideration.

21. Accordingly, the sentence of the appellant/applicant is suspended till the decision of the appeal, on his furnishing personal bond in the sum of Rs.1 Lac with two sureties of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:-

- a) The appellant shall deposit the fine as imposed without prejudice to his rights and conditions, within four weeks from today.
- b) The applicant shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi without prior permission of the Court concerned;
- c) The applicant shall remain available on mobile number and keep it operational at all times and will be on the person of the applicant at all relevant time during bail;
- d) The appellant/applicant shall contact the Investigating Officer on every 1st and 3rd Tuesday of the month throughout the pendency of the appeal;
- e) The applicant shall not indulge himself in any criminal This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18 activity of any nature whatsoever;

f) In case of change of residential address, mobile number and/or contact details, etc. same shall be promptly intimated to the Investigating Officer/SHO of Police Station CBI/AC-2, New Delhi, by way of an affidavit; and

g) The appellant/applicant shall remain present in Court as and when the appeal is taken up for hearing.

22. With the aforesaid terms and conditions, the application stands disposed of.

23. Nothing in this order shall be construed as an expression of opinion on the merits of the appeal.

24. Copy of this order be sent to Jail Superintendent for compliance.

25. A copy of this order be given dasti under the signatures of Court Master.

TUSHAR RAO GEDELA, J SEPTEMBER 5, 2023/ms This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:18