

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

**INTERIM APPLICATION NO. 948 OF 2019
ALONG WITH
INTERIM APPLICATION NO. 949 OF 2019
IN
CRIMINAL APPEAL NO. 1463 OF 2019**

1. Satish Damodar Shedage
2. Kshitija Satish Shedage

Both R/at 553, Mehtre Niwas,
Parijat Colony, Near C-Ram Com.
Hadpsar, Pune.

... Applicants

Versus

The State of Maharashtra

... Respondent

.....

Mr. R. S. Dubey a/w Mr. Daulat G. Khamkar, Advocate for the
Applicants

Ms. A. A. Takalkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th NOVEMBER, 2020.

PER COURT:

1. These are applications preferred by the applicants for suspension of sentence and grant of bail. The applicants were convicted for the offence punishable under Sections 420, 406, 465, 468, 471 r/w 34 of Indian Penal Code (for short “IPC”) and Section 3 of Maharashtra Protection of Interest of Depositors Act, 1999 (for

short “MPID Act”). The learned District Judge and Additional Sessions Judge, Thane by Judgment and order dated 21st September, 2019 sentenced the applicants to suffer rigorous imprisonment for Seven years for offences punishable under Sections 465, 468 and 471 r/w 34 of IPC. For the offence punishable under Section 420 r/w 34 of IPC, both accused were sentenced to suffer rigorous imprisonment for Five years and fine of Rs. 75,00,000/- each and in default of payment of fine to undergo simple imprisonment for Two years. For the offence punishable under Section 406 of IPC they were sentenced to suffer rigorous imprisonment for Two years and fine of 10,000/- each and in default to undergo simple imprisonment for Six months. For the offence punishable under Section 3 of MPID Act both were sentenced to suffer rigorous imprisonment for Five years and fine of Rs.1,00,000/- each and in default of payment of fine to undergo simple imprisonment for One year. Substantive sentences were directed to run concurrently.

2. Learned advocate for the applicants submitted that there is no evidence about involvement of applicants. The applicants are husband and wife. No role is attributed to applicant No.1. The applicants had not collected any amount from investors. They have not issued any receipts. Two flats owned by applicant No.2 were

attached during investigation. The applicants were on bail during trial. There is no evidence to substantiate charge of forgery. Fine imposed by the trial Court is arbitrary. The fine may be suspended. The applicants are not in position to deposit the fine amount on account of financial constraints. PW-1, 2 & PW-8 who were the employees of the company and PW-1, who happened to be informant had themselves collected the investments from various investors. PW-1 has issued receipts and signed the agreement in the name of S.K. International without any Power of Attorney and authority letter. The alleged authority letter dated 3rd January, 2012 was forcibly taken by police, when the accused were in police custody. All the documents were signed by informant prior to the date of the said authority letter. PW-1, 2 & 8 had invested in S.K. International. Amount was accepted by them. The documents were signed by them. PW-3 to 7 and PW-8 were the investors. They deposed that they had given money to PW-1 and he had issued the receipts and signed the agreements. None of the independent witnesses have identified the accused and established their nexus with the offence. The Investigating Officer did not collect specimen signature of accused. He did not send the documents for expert opinion regarding the signature of exhibited documents. The informant was manager of S.K. International. PW-1, 2 & 8 were employees of S.K. International.

To get themselves absolved from the charge they had deposed against the accused. Learned counsel for the applicants tendered documents in respect to the properties which were attached during the course of investigation. It is submitted that the applicants are in custody from the date of conviction i.e. 21st September, 2019 and for more than one year they are in jail. On the point of sentence of fine and in support of his submission that the fine is exorbitant and needs to be suspended, learned advocate relied upon the decision of the Supreme Court in the case of ***Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. & Anr.*** delivered in Criminal Appeal No. 521 of 2007 by the Supreme Court and another decision of the Supreme Court in the case of ***Satyendra Kumar Mehra @ Satendera Kumar Mehra Vs. The State of Zharkhand***, (2018, 15 SCC 139). Learned counsel for the applicants however submitted that the applicants are willing to deposit the amount of Rs.10,000/- each towards fine imposed by the trial Court for offence punishable under Section 406 of IPC. The applicants are also willing to deposit the amount of Rs.1,00,000/- each towards the fine imposed for offence under Section 3 of MPID Act, in the event, reasonable time is granted to the applicants to deposit the said amount after they are released on bail.

3. Learned APP submitted that the applicants were

involved in the crime. Specific role has been attributed to them. Investors were induced to invest the amount. Huge loss is caused to them. The fine was imposed considering the nature of offence.

4. In Paragraph 47 of Judgment, trial Court has observed that though the investigating officer seized some documents in respect of immovable properties of accused, the competent authority has not played role and no funds are raised. The trial Court however directed that the competent authority is at liberty to attach and sale immovable properties of accused, if any and to adjust the amount towards fine imposed under clause No.3 of the order of impugned Judgment. The appeal preferred by the applicants has been admitted. Several grounds are raised challenging the impugned Judgment of conviction. The applicants are husband and wife. They were on bail during the trial. It is not reported that the facility of bail was misused by them. On the date of Judgment of conviction, the applicants were taken in custody. Since then they are in custody for a period of about 14 months. Fine amount is exorbitant. The submission of applicants to permit them to deposit fine of Rs.1,10,000/- each is accepted. Considering the aforesaid circumstances, the substantive sentences of imprisonment can be suspended on certain terms and conditions. Hence, I pass the following order :

ORDER

i) Interim Application Nos. 948 of 2019 and 949 of 2019 are allowed and disposed of.

ii) The sentences are suspended. The applicants are directed to be released on bail on executing P.R. bond in the sum of Rs.25,000/- each with one or more sureties in the like amount.

iii) The applicants shall deposit the fine amount of Rs.1,10,000/- each before the trial Court within three months after they are released on bail.

iv) The applicants are permitted to furnish Cash Security in the sum of Rs.25,000/- each for a period of eight weeks in lieu of surety.

v) The applicants shall report Kopari Police Station, Thane once in a month on every first Saturday of the month between 11 am. to 1.00 p.m. till further order.

5. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)