

STATE OF MAHARASHTRA

v.

MADHUKAR WAMANRAO SMARTH
(Criminal Appeal Nos. 520-521 of 2008)

MARCH 24, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Code of Criminal Procedure, 1973 – s.389 – Suspension of sentence pending appeal – Release of person convicted for offence of cheating, abetment of cheating, criminal breach of trust and criminal conspiracy on bail – Held: Not sustainable – Reasons indicated by High Court for granting bail do not satisfy the parameters – Order of bail set aside – Matter remitted to High Court for reconsideration.

The trial court convicted the respondents for committing the offence of cheating, preparing forged and false documents for cheating and using them as genuine, abetment of crime and committing criminal breach of trust by forming criminal conspiracy in furtherance of their common intention. The respondents filed appeals before the High Court for grant of bail by suspension of sentence in terms of s.389 Cr. P.C. High Court granted bail to each of the respondents on the ground that bail was granted during trial and the liberty was not misused; that there was likelihood of delay in disposal of the appeals; and that in the case of respondent in CrI. Appeal 520-521/2008 the evidence appeared to be scanty against him. Hence the present appeals.

Allowing the appeals and remitting the matters, the Court

HELD: The parameters to be applied while dealing with the application for suspension of sentence in cases where life or death sentence is imposed, may not be applicable to other cases. But, the gravity of the offence,

A the sentence imposed and several other similar factors need to be considered by the Court. The fact that accused was on bail during trial is certainly not a relevant factor. This position has been fairly conceded by counsel for the respondents. The reasons indicated by the High Court

B for granting bail do not satisfy the parameters. It needs to be pointed out that the trial court considering the gravity of the offence directed the sentences to run consecutively. This aspect was not considered by the High Court. In the circumstances, the impugned order in

C each case is indefensible and is directed to be set aside. But considering the fact that the High Court had not applied correct principles it would be proper for the High Court to re-consider the matter and for that purpose the matter is remitted to the High Court. (Para 11) [312-D, E, F, G]

D *Kishori Lal v. Rupa and Ors.* 2004 (7) SCC 639; *Vasant Tukaram Pawar v. State of Maharashtra* 2005 (5) SCC 281 – relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 520-521 of 2008.

E From the Judgment and Order dated 22.6.2007 and 29.6.2007 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Crl. A. Nos. 1698 and 1775/2007 in Crl. A. No. 220/2007 respectively.

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Criminal Appeal Nos. 522, 523, 524-527, 528 and 529 of 2008.

G Shekhar Naphade, Ravindra Keshavrao Adsure for the Appellant.

Ashok Srivastav, U.U. Lalit, Satyajit A. Desai, Anagha S. Desai, P.N. Gupta, Dr. R.S. Sundram, Gagan Sanghi, Mihir Y. Kanade, Porus Kotwal, Rameshwar Prasad Goyal, Amol N. Suryawanshi, Naveen R. Nath, Lalit Mohini Bhat and A.

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Dashratha for the Respondent.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. In each of these cases challenge is to the bail granted to the respondent by the Bombay High Court, Nagpur Bench. Since all these appeals have a common matrix, they are taken up together.

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3. On the basis of allegations that the respondents were guilty of having committed cheating, preparing forged and false documents for the purpose of cheating, using the said documents as genuine, abetment of crime, committing criminal breach of trust by forming criminal conspiracy in furtherance of their common intention, law was set into motion.

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4. They were convicted by the trial Court, and have preferred appeals before the High Court and had prayed for grant of bail by suspension of sentence in terms of Section 389 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The High Court primarily granted bail to each of the respondents on the ground that bail was granted during trial and the liberty was not misused. Further ground indicated was that there was likelihood of delay in disposal of the appeals. In the case of respondent-Madhukar it was stated that the evidence appeared to be scanty against him.

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5. Questioning correctness of the order passed in each case, learned counsel for the State submitted that there was large scale of manipulation of records resulting in manipulation of results of the candidates and each of the respondents had a definite role to play. Apart from the cases where they have been convicted, large number of connected cases are also pending. In the case of respondent-Yadav Nathoba Konchade, two cases under the Prevention of Corruption Act, 1988 (in short 'PC Act')

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A were pending. In one case the said accused had offered bribe to the investigating officer and was caught red handed. It was submitted that considering the gravity of the offence the sentences were directed to run consecutively in terms of Section 31(1) of Code. It was stated that the High Court was misled in the case of respondent-Madhukar who made a false statement before the High Court that he had deposited fine amount while in fact he had not done so as would be apparent from the second order. It was essentially submitted that without indicating any plausible reason, much less, the reasons contemplated under Section 389 of the Code, the bail has been granted. The seriousness of the allegations for which the accused respondents have been already convicted has been completely lost sight of.

D 6. Learned counsel for the respondents on the other hand submitted that the parameters for grant of bail and cancellation of bail are different. It was submitted that some of them are very elderly persons and have retired from services. It is not a case where any irrelevant factor has been taken into consideration. E It is pointed out on behalf of respondent-Madhukar that the only link the said accused is stated to have centres round two chits which were exhibited. They did not in any way establish the involvement of the accused in the alleged crime. F That is why in his case the High Court observed that the evidence is scanty.

G 7. In reply, learned counsel for the State submitted that in some cases, for example, accused Shamrao Kisanrao Kamlakar the ground for releasing him was the grant of bail to co-accused. Further, the plea taken by Madhukar is not correct inasmuch as one of the co-accused has categorically stated that pressure was exerted by accused Madhukar for doing the illegal acts.

H 8. The factual details involved are as follows:

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Sl. No.	Case Name & No.	Case No.	Date of conviction	Date of bail	Sentence undergone	Date of supply of copy of the Judgment	Conviction under section	Imprisonment
1.	State of Maharashtra v. Sunil Mishra	Regular Criminal Case No. 372/02	10.1.07	22.2.07	43 days	No information	(A) U/S 420 r/w S.34, 109 IPC S.248 (ii) Cr.P.C.	(A) RI for 6 years And fine of Rs.20000/- and in default to suffer RI for 3 months
							(B) U/S 468 r/w S.34 IPC + S. 248(ii) Cr.P.C.	(B) RI for 5 years And fine of Rs.15,000/- in Default to suffer RI for 2 months
							(C) U/S 471 r/w 34 IPC+ S. 248 (ii) Cr.P.C.	(C) RI for 1 year and fine of Rs.5,000/- in Default to suffer RI for 1 month
							(D) U/S 120B + S.248 (ii) IPC	(D)RI for 6 Months and fine of Rs.2,000/- In default to Suffer RI for 15 days (sentences to run consecutively)
							Total Imprisonment	12 years 6 months

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								(sentences to run consecutively) 12 years 6 months
3.	State of Maharashtra vs. Shailesh Tupkari	Regular Criminal Case No. 368/02	18.6.07	30.6.07	12 days	20.6.07	(A) U/S 420 r/w Sec.34 IPC	(A) RI for 3 years and to pay fine of Rs.10,000/- and in default to suffer RI for 2 months
							(B) U/S 468 r/w S.34 IPC	(B) RI for 5 years And to pay fine of Rs.15,000/- And in Default to suffer RI for 2 months
							(C) U/S 471 r/w S.34 IPC	(C) RI for 1 year and to pay fine of Rs.5,000/- and in Default to suffer RI for 1 month
							(D) U/S 120B r/w S.109 and S.34 IPC	(D)RI for 6 Months and to pay fine of Rs.2,000/- and in default to Suffer RI for 15 days
							(E) U/s 409 IPC	(E) RI for 3 years

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B							Total Imprisonment	12 years 6 months
C	4.	State of Maharashtra vs. Mahendra Goti	Regular Criminal Case No. 361/02	12.2.08	Immediately taken in custody on 12.2.08 and is in jail	In custody	14.2.08	(A) U/S 420 r/w S.34 IPC (A) RI for 3 years and to pay fine of Rs.10,000/- and in default to suffer RI for 2 months
D							(B) U/S 468 r/w S.34 IPC	(B) RI for 5 years And to pay fine of Rs.15,000/- And in Default to suffer RI for 2 months
E							(C) U/S 471 r/w S.34 IPC	(C) RI for 1 year and to pay fine of Rs.5,000/- and in Default to suffer RI for 1 month
F							(D) U/S 120B r/w S.109 and S.34 IPC	(D)RI for 6 Months and to pay fine of Rs.2,000/- and in default to Suffer
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								RI for 15 days	A
							(E) U/s 409 IPC	(E) RI for 3 years And to pay fine of Rs.20,000/- and In default to suffer RI for 3 months (sentences to run consecutively)	B
							Total Imprisonment	12 years 6 months	C
5.	State of Maharashtra Vs. Mohd. Ishaq	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	D
6.	State of Maharashtra Vs. Laxmikant Zade	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	E
7.	State of Maharashtra Vs. Atul Gudadhe	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	F
8.	State of Maharashtra Vs. Parag Bagde	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	F

9. The parameters to be observed by the High Court while dealing with an application for suspension of sentence and grant of bail have been highlighted by this Court in many cases. In *Kishori Lal v. Rupa and Ors.* (2004 (7) SCC 639) it was observed as follows:

“Section 389 of the Code deals with suspension of

A 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
B ingredients of Section 389 is the requirement for the
appellate Court to record reasons in writing for ordering
suspension of execution of the sentence or order appealed.
C If he is in confinement, the said court can direct that he be
released on bail or on his own bond. The 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.”

10. The above position was re-iterated in *Vasant Tukaram Pawar v. State of Maharashtra* (2005 (5) SCC 281).

D 11. It is true that the parameters to be applied in cases
where life or death sentence is imposed, may not be applicable
to other cases. But, the gravity of the offence, the sentence
imposed and several other similar factors need to be considered
E by the Court. The fact that accused was on bail during trial is
certainly not a relevant factor. This position has been fairly
conceded by learned counsel for the respondents. The reasons
indicated by the High Court for granting bail in our opinion do
not satisfy the parameters. It needs to be pointed out that the
F trial Court considering the gravity of the offence has directed
the sentences to run consecutively. This aspect has also not
been considered by the High Court. In the circumstances, the
impugned order in each case is indefensible and deserves to
be set aside which we direct. But considering the fact that the
High Court had not applied correct principles it would be proper
G for the High Court to re-consider the matter and for that purpose
the matter is remitted to the High Court. Needless to say the
High Court shall consider all the relevant aspects and pass
orders in accordance with law.

12. The appeals are allowed.

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Appeals allowed.