

A VASANT TUKARAM PAWAR

v.

C STATE OF MAHARASHTRA

APRIL 15, 2005

B [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C *Code of Criminal Procedure, 1973—Section 389—Suspension of Sentence and grant of bail—Conviction and sentence by Trial Court under Prevention of Corruption Act—Accused also convicted under the Act in another case on previous occasion—Prayer for suspension of sentence and grant of bail rejected by High Court on the ground that fine imposed was not deposited—Relevance of forfeiture of attached property and effect and relevance of other case not considered—Fine deposited subsequent to decision—On appeal, held:*  
D *Suspension of sentence and grant of bail should not be granted as a matter of routine—In the facts of the present case High Court directed to reconsider the application considering the effect and relevance of the other case and relevance of the forfeiture of the property—Prevention of Corruption Act, 1988—Sections 13(1)(e) and 13(2).*

E *Bail and Suspension of sentence—Difference between.*

F **Appellant-accused was tried under Section 13(1)(e) r/w Section 13(2) of Prevention of Corruption Act, 1988 for being in possession of property disproportionate to his known source of income. Trial Court convicted him for the offences and sentenced him accordingly. In appeal to High Court, appellant prayed for suspension of sentence and grant of bail. High Court rejected the prayer on the ground that the fine imposed had not been deposited by the appellant.**

G **Respondent-State contended that in a previous case (Special Case No.99 of 1996) appellant had faced trial with two others wherein he was convicted and sentenced for the offences punishable u/ss. 13(1)(c), 13(1)(d) r/w Section 13(2) of the Act and Section 120 and 409 IPC, hence in this background no interference was called for.**

H **Appellant contended that the fine had been deposited subsequent to the**

decision of the High Court and that his conviction in the other case was not one of the factors for rejecting the prayer. A

Disposing of the appeal, the Court

**HELD : 1. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 Cr.P.C., 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. [633-E-G]** B C

**2. One of the reasons which weighed with the High Court was that fine imposed had not been deposited. Same has been subsequently deposited. Further, the relevance of the forfeiture of the attached property has not been considered. Therefore, the High Court is directed 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. [633-H; 634-A]** D

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 558 of 2005.** E

From the Judgment and Order dated 15.6.2004 of the Bombay High Court at Aurangabad in Crl. A. No. 729 of 2004 in Crl. A. No. 188 of 2004.

Dr. Rajeev, B. Masodkar and Anil K. Jha for the Appellant. F

U.U. Lalit, S.S. Shinde, Mukesh K. Giri and R.K. Adsure with him for the Respondent.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J. Leave granted.** G

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. H

A Factual background facts in a nutshell are as follows :

B 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.

G 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 conclusion that the appellant was in possession of assets disproportionate to

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the known sources of income. A

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 appellants. Additionally it is pointed out that in Special Case No. 99 of 1996 the appellants 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 relating 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. B  
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Learned counsel for the appellants submitted that the conviction in the other case was not one of the factors considered for rejecting the prayer. E

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 appellants 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. F  
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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 H

**A** 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.

**B** The appeal is accordingly disposed of.

K.K.T.

Appeal disposed of.