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SHIV KUMAR

v.

STATE OF N.C.T. OF DELHI
(Criminal Appeal No. 2034 of 2008)

DECEMBER 15, 2008

B

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

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Code of Criminal Procedure, 1973 – S. 389 – Suspension of sentence during pendency of appeal and release of accused on bail – Conviction u/ss. 7 and 13(2) of Prevention of Corruption Act and sentence of three years – Application for suspension of sentence on the plea that minimum sentence for the offence was only six months and he had already served sentence of one year and eight months – Rejected by High

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Court – On appeal, Held: Generally for conviction under the Act, protection u/s.389 not desirable – However, in the peculiar facts of the case, direction to High Court for early disposal of the appeal – Prevention of Corruption Act, 1988 – ss. 7 and 13 (2).

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Appellant was convicted u/ss. 7 and 13(2) of Prevention of Corruption Act, 1988 and sentenced to three years imprisonment. Appellant filed an application seeking suspension of sentence in terms of Section 389 Cr.P.C, on the ground that he had suffered more than 1 year and 8

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months sentence. He contended that the minimum sentence for the offence was only six months; and that he being the peon in the department concerned had no authority to issue any domicile certificate. High Court rejected the application. Hence the present appeal.

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Disposing of the appeal, the Court

HELD: Where the accused is convicted for offence punishable under Prevention of Corruption Act, 1988, it would not be prudent and desirable to give protection u/ s. 389 Cr.P.C. However taking into account the peculiar

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circumstances of the case, the High Court is requested to dispose of the appeal as early as practicable. In case the appeal is not disposed of by the end of March, 2009, it shall be open to the appellant to move to the High Court afresh for bail. [Paras 9 and 10] [571-E-F; 572-G]

Bhagwan Rama Shinde Gosai vs. State of Gujarat (1999) 4 SCC 421 and Vijay Kumar vs. Narendra (2002) 9 SCC 364, referred to.

Case Law Reference:

(1999) 4 SCC 421	referred to	Para 6
(2002) 9 SCC 364	referred to	Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2034 of 2008.

From the Judgment and Order dated 19.8.2008 of the High Court of Delhi at New Delhi in CrI. M.B. 221/2008 in CrI. Appeal No. 253/2007.

Rishi Malhotra for the Appellant.

B.B. Singh, Sadhana Sandhu and Anil Jatiyar for the Respondent.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to order passed by a learned Single Judge of the Delhi High Court rejecting the application filed by the appellant for suspension of sentence in terms of Section 389 of the Code of Criminal procedure, 1973 (in short the 'Code'). The stand of the appellant is that he had suffered more than 1 year and eight months' custody and therefore the sentence should be suspended. The High Court noted that earlier also a similar prayer was made which was rejected by order dated 18.9.2007.

3. Learned counsel for the appellant submitted that he was only a peon who had no authority to issue any domicile certificate. Therefore the conviction should not have been recorded. In any event the sentences imposed for offence punishable under Sections 7 & 13 (2) of the Prevention of Corruption Act, 1988 (in short the 'Act') are harsh. In such a case

A minimum sentence is six months but in the instant case three years imprisonment has been awarded.

4. Learned counsel for the State on the other hand supported the judgment.

5. Several decisions were cited at the bar.

B 6. In *Bhagwan Rama Shinde Gosai v. State of Gujarat* [1999(4) SCC 421] it was inter alia held as follows:

C "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."

F 7. In *Vijay Kumar v. Narendra* [2002(9) SCC 364] it was inter alia observed as follows:

G "On perusal of the record and on consideration of the submissions made by the learned counsel appearing for the parties, we are of the view that in the context of the facts and circumstances of the case the High Court was in error in passing the order releasing the respondents on bail. The High Court has neither given any reason nor has indicated any exceptional circumstance for granting bail to the respondents. In the above circumstances, it is difficult for

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us to even surmise the circumstance which prompted the learned Single Judge to consider the accused persons to be entitled to the discretionary relief of bail pending the appeal. The principle is well settled that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. Our attention has not been drawn to any material which would show that the learned Single Judge took into consideration the relevant factors while passing the bail order. We refrain ourselves from making any observation touching on merits of the case lest it may prejudice any of the parties. Suffice it to state that we do not consider this a fit case for grant of bail to the respondents during pendency of the appeal filed by them."

8. Of course both these cases related to offence punishable under Section 302 IPC.

9. This court has observed in several cases that where the accused is convicted for offence punishable under the Act, it would not be prudent and desirable to give protection under Section 389 of the 'Code'.

10. However taking into account the peculiar circumstances of the case we request the High Court to dispose of the appeal as early as practicable. To avoid unnecessary delay, let the appellant appear before the High Court on the 6th of January, 2009. We request the learned Chief Justice of the High Court to allot the case to an appropriate Bench. Needless to say the appeal shall be disposed of, as noted above, as early as practicable. In case the appeal is not disposed of by the end of March, 2009, it shall be open to the appellant to move to the High Court afresh for bail and if such occasion arises needless to say the application shall be dealt with in accordance with law.

11. The appeal is disposed of accordingly.

K.K.T.

Appeal disposed of.