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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 578/2024

SHRI S. RABBAN ALAM

.....Appellant

Through: Mr. Shishir Mathur, Mr. Mohd. Ghulam and Ms. Muskan Tyagi, Advocates.

versus

CBI THROUGH ITS DIRECTOR

.....Respondent

Through: Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **10.07.2024**

CRL.M.A. 19824/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.A. 578/2024

By way of the present criminal appeal filed under section 415 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the appellant impugns judgment dated 05.06.2024 and order on sentence dated 05.07.2024.

2. At the outset, it is noticed that the appeal has been filed under section 415 of the BNSS, even though the investigation and trial have all happened under the Prevention of Corruption Act, 1988 and the Code of Criminal Procedure, 1973 ('Cr.P.C.').

3. Upon being queried, Mr. Shishir Mathur, learned counsel appearing for the appellant submits, that he had in fact filed the appeal under the Cr.P.C. but upon on an objection raised by the Registry, it was re-filed under the BNSS.
4. On a plain reading of section 531(2)(a) of the BNSS it is noticed that if before the coming into force of the BNSS, “ *there is any appeal, application, trial, inquiry or investigation pending*” , then “ *such appeal, application, trial, inquiry or investigation*” is required to be “ *disposed-of, continued, held or made*” in accordance with the Cr.P.C. In the present case, admittedly the trial was conducted and completed under the Cr.P.C. As per the general, settled principle of law, an appeal is considered to be a continuation of the trial¹. However, the wording of section 531(2)(a) of the BNSS is amenable to a possible interpretation that if an *appeal is pending* before the coming into force of the BNSS, *only then would such appeal* be continued under the Cr.P.C.
5. In the circumstances, the question of whether the present appeal is to be entertained and dealt-with under section 374 of the Cr.P.C. or under section 415 of the BNSS, is left-open to be considered subsequently.
6. Issue notice.
7. Mr. Rajesh Kumar, learned SPP appears for the respondent on advance copy; and accepts notice.

¹ *Malluru Mallappa (Dead) Through Legal Representatives vs. Kuruvathappa and Others*, (2020) 4 SCC 313 at para 14; *Maksud Sheikh Gaffur Sheikh vs. State of Maharashtra*, 2020 SCC OnLine Bom 878 at para 25

8. **Admit.**
9. Let Trial Court Record be requisitioned in electronic form; let appeal paper-book be prepared; and let a copy of the paper-book be supplied to both counsel, before the next date.
10. List in due course on the Regular Board.

CRL.M.(BAIL) 1117/2024

11. By way of the present application the appellant seeks suspension of sentence, pending appeal.
12. Issue notice.
13. Mr. Rajesh Kumar, learned SPP appears on advance copy; accepts notice.
14. Learned counsel appearing for the appellant submits that a perusal of the impugned judgment, in particular para 9.5 thereof shows that the appellant's conviction hinges upon the construction placed by the learned Trial Court on the deposition of PW-3, to which deposition however, the learned Trial Court has *added words* in order to draw an inference and ascribe a meaning, which is not made out otherwise.
15. Attention in this behalf is drawn to the following portion of the impugned judgment:

*“.....Infact in my considered opinion, the said words ‘main ye kam nahin karunga’ as uttered by the accused refer to the accused assuring that he will not do such kind of work that even after taking money, he will not get the work done for PW3, like saying ‘main ye kam nahin karunga’ ‘**ki paise bhi le loo aur kam bhi na karoon**’ (It is clarified that the words in bold have been added by this court for better understanding of the actual intention*

of accused by speaking those words and were not actually spoken by the accused.).....”²

16. Counsel submits that the appellant is 65 years of age and suffers from diabetes; that he has already undergone about 02 months of imprisonment during the course of trial, whereafter he was admitted to regular bail.
17. It is noticed that in sentencing order dated 05.07.2024, the learned Trial Court has observed that it does not find this to be a case fit for awarding maximum punishment and has therefore proceeded to award to the appellant simple imprisonment of 03 years for the offence under section 7 of the Prevention of Corruption Act, 1988 ('PoC Act') and simple imprisonment of 04 years for the offence under section 13(1)(d) read with section 13(2) of the PoC Act along with a fine of Rs.1,00,000/- on each count.
18. Mr. Rajesh Kumar, learned SPP appearing for the respondent/CBI opposes the suspension of sentence, submitting that offences under the PoC Act are offences against the public at large and deserve no leniency. In support of this submission, counsel relies upon the decision of a Co-ordinate Bench in *Jai Bhagwan vs. State (NCT of Delhi)*³ to submit that the convict does not have an absolute right of suspension of sentence during the pendency of the appeal, though the court has discretion depending on the nature of the offence. The appellant has been in custody after passing of the sentencing order on

² cf. para 9.5. of Impugned Judgment dated 05.06.2024.

³ (2007) SCC OnLine Del 1502

05.07.2024. The fine of Rs.2,00,000/- imposed is stated to have been paid.

19. Upon an overall consideration of the facts and circumstances of the case, in particular the observations and inferences of the learned Trial Court as referred to above; considering the appellant's age and his state of health; and the fact that the maximum punishment imposed upon him is of 04 years simple imprisonment, this court is inclined to allow the present application.
20. Accordingly, the sentence imposed on appellant/S. Rabban Alam son of late Khursheed Hussain shall stand suspended during the pendency of the appeal, upon the following conditions:
 - 20.1. The appellant shall furnish a personal bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the Jail Superintendent;
 - 20.2. The appellant shall *ordinarily* reside at the address as per prison records and shall promptly inform the Investigating Officer in writing if there is any change in that address;
 - 20.3. The appellant shall furnish to the Investigating Officer a cellphone number on which the appellant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times ;
 - 20.4. If the appellant has a passport, he shall surrender the same to the the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;

- 20.5. The appellant shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending appeal.
21. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
22. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
23. The application stands disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 10, 2024/ak