

(2020) 08 JH CK 0188

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 326, 327, 328 Of 2020

Anosh Ekka And Ors

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389, 436A, 439

Indian Penal Code, 1860 — Section 109

Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(1)(e), 13(2)

Citation : (2020) 08 JH CK 0188

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Anil Kumar, Rohit Sinha

Final Decision : Disposed Of

Judgement

I.A. No. 3427 of 2020, I.A. No. 3426 of 2020 & I.A. No. 3428 of 2020 Heard the parties through video conferencing. Mr. Anil Kumar, the learned Senior Advocate appearing for the appellants submits that the appellant-petitioner of I.A. No. 3427 of 2020 has been convicted for the offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and the appellants-petitioners of I.A. No. 3426 & 3428 of 2020 respectively have been convicted for the offences punishable under Section 109 of the Indian Penal Code read with Section 13(2) & 13(1)(e) of the Prevention of Corruption Act, 1988 and all of them have been sentenced to undergo R.I. for seven years and fine of Rs.50,00,000/- each as these appellant-convicts have been found in possession of disproportionate assets worth Rs.16,62,73,066/-.

It is submitted by the learned Senior Advocate appearing for the appellant-petitioners that the appellant-petitioner of I.A. No. 3427 of 2020 has undergone more than half of the sentence. So far as the appellants-petitioners of I.A. No. 3426 and 3428 of 2020 are concerned, it is submitted that the offence punishable under section 109 of the Indian Penal Code is not attracted and they

are not the public servants. It is next submitted by the learned Senior Advocate appearing for the appellant-petitioners drawing attention of this Court to the following orders passed by a co-ordinate bench of this Court:

(i) order dated 30.11.2018, in Criminal Appeal (S.J) No. 817 of 2018, in the case of Vinod Kumar Jha Vs. State of Jharkhand through C.B.I.;

(ii) order dated 14.12.2018, passed in Criminal Appeal (S.J) No. 193 of 2018, in the case of Jagdish Sharma Vs. State of Jharkhand through C.B.I. and

(iii) order dated 12.07.2019, passed in Criminal Appeal (S.J) No. 138 of 2018, in the case of Lalu Prasad @ Lalu Prasad Yadav Vs. State of Jharkhand through C.B.I. (AHD);

That in those criminal appeals involving inter alia the offences punishable under the penal provision of the Prevention of Corruption Act, 1988, some of the convicts were granted bail after they underwent half of the sentence. Hence, it is submitted by the learned Senior Advocate appearing for the appellant-petitioners that the sentence of the appellant-petitioners be suspended and they be admitted to bail.

Learned Senior Advocate appearing for the appellant- petitioners further submits that the appellant-petitioners are not ready for hearing of these appeals on merit now because of the voluminous nature of the documents involved.

Mr. Rohit Sinha, learned counsel for the C.B.I. on the other hand vehemently opposes the prayer for bail and submits that the State of Jharkhand has filed Special Leave Petition (Criminal) Diary No(s). 46342 of 2019 against the said order 12.07.2019, passed in Criminal Appeal (SJ) No. 138 of 2018 and the Hon'ble Supreme Court of India, vide order dated 14.02.2020, has been pleased to issue notice. It is next submitted by Mr. Sinha that Section 436 A of the Code of Criminal Procedure which provides that an under trial prisoner can be detained during the period of investigation, enquiry or trial under the said Code for an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments) for a period extending up to one-half of the maximum period of imprisonment specified for that offence; does not apply to convicts and in this case, the appellants-petitioners before this Court are convicts. It is further submitted by Mr. Sinha, that the C.B.I. is ready for hearing of these appeals on merit and as the appellants are themselves not ready for hearing of these appeals that does not mean that they will be entitled to bail and he submits that hearing of these appeals be taken up on merit as and when the appellants become ready for the same. Hence, it is submitted that keeping in view the serious charges against the appellant and sufficiency of the evidence in record for their conviction, the prayer for suspension of sentence and bail during the pendency of these appeals be rejected.

Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to refer to the settled principle of law that

where the accused is convicted for offence punishable under the Prevention of Corruption Act, 1988, it will not be prudent and desirable to give protection under Section 389 of the Code of Criminal Procedure, which has been reiterated by the Hon'ble Supreme Court of India, in the case of Shiv Kumar Vs. State (NCT of Delhi), reported in (2008) 17 SCC 122 Paragraph no.7 of which reads as under:-

"7. 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". However, taking into account the peculiar circumstances of the case we request the High Court to dispose of the appeal as early as practicable."

It is pertinent to mention here that in none of the three orders of the said coordinate Bench, relied upon by the learned Senior Advocate appearing for the appellants, the said settled principle of law that where the accused is convicted for offence punishable under the Prevention of Corruption Act, 1988 it will not be prudent and desirable to give protection under Section 389 of the Code of Criminal Procedure was considered nor the judgment of Hon'ble Supreme Court of India in the case of Shiv Kumar Vs. State (NCT of Delhi) (Supra) was placed before the said Bench.

It is also pertinent to mention here that this Court can hear and dispose of these appeals as and when the appellants get ready for the same.

It is also appropriate to mention here that this Court even during the COVID 19 pandemic has through video conferencing disposed of several criminal appeals involving inter alia the offences punishable under the Prevention of Corruption Act, 1988 including fresh appeals in which the appellants were in custody.

In view of the serious charges against the appellants and the nature of evidence in the record, which this Court feels not proper to discuss in detail at this stage and as the appellants are not ready for hearing of these appeals though the same can be heard and disposed of finally as and when they get ready for the same, this Court is not inclined to admit the appellants to bail or to suspend their sentences. Accordingly, the prayer for suspending the sentences and releasing the appellants on bail during the pendency of these appeals is rejected.

It is made clear that these appeals can be heard on merit as and when the appellants get ready for the same; upon the appellants filing necessary mention slip.

These interlocutory applications are disposed of accordingly.