

**(2022) 05 DEL CK 0136**

**In the Delhi High Court**

**Case No :** Criminal Appeal No. 189, 192 Of 2022

**Maresh Kumar Agarwal**

**APPELLANT**

**Vs**

**Central Bureau Of Investigation**

**RESPONDENT**

**Date of Decision :** 23-05-2022

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 389, 389(1), 437, 439  
Indian Penal Code, 1860 — Section 120B, 376, 420, 471, 511  
Prevention Of Corruption Act, 1988 — Section 13(1)(d)(ii), 13(1)(d)(iii)

**Citation :** (2022) 05 DEL CK 0136

**Hon'ble Judges :** Anu Malhotra, J

**Bench :** Single Bench

**Advocate :** Abhishek Manu Singhvi, Mudit Jain, Vijay Gupta, Avishkar Singhvi, R.S. Cheema, Tarannum Cheema, Akash Singh, Vijay Aggarwal, Hardik Sharma, Vishal Gourav, Ambrish

**Final Decision :** Disposed Of

## **Judgement**

Anu Malhotra, J

CRL.M.(BAIL) 513/2022 in CRL.A. 189/2022

CRL.M.(BAIL) 514/2022 in CRL.A. 192/2022

1. The appellant Mahesh Kumar Agarwal of Crl.A. No. 189/2022 and Nirmal Kumar Agarwal, appellant of Crl.A. No. 192/2022 respectively vide applications, i.e., CRL.M.(Bail) 513/2022 in Crl.A. No. 189/2022 and Crl.M.(Bail) No. 514/2022 in Crl.A. No. 192/2022 filed under Section 389 of the Cr.P.C., 1973, seek the grant of suspension of sentence during the pendency of the appeal admitted vide orders dated 2.5.2022 in as much as both the applicants have been convicted vide the same impugned judgment dated 21.4.2022 of the learned Special Judge (PC Act), CBI (Coal Block Cases-01), Rouse Avenue District Courts, New Delhi in CC No. 252/2019 and both the applicants have been sentenced vide the same impugned order on sentence dated 25.4.2022 and thus it has been considered

appropriate to take up the two applications together.

2. Vide the impugned judgment dated 21.4.2022 in CNR NO. DLCT-11-000961-2019, the applicant Nirmal Kumar Agarwal, the appellant of Crl.A No. 192/2022 has been convicted for the offences punishable under Sections (i) u/s 120B IPC, (ii) u/s 120B IPC read with Section 420 IPC, (iii) u/s 420 IPC and (iv) u/s 471 of the Indian Penal Code, 1860, whereas the applicant Mahesh Kumar Agarwal the appellant of Crl.A. No. 189/2022 has been convicted for the offences punishable under Sections (i) u/s 120B IPC, (ii) u/s 120B IPC read with Section 420 IPC (iii) u/s 420 IPC read with Section 511 IPC and (iv) u/s 471 IPC.

3. The said appellants vide the impugned order on sentence dated 25.4.2022 have been sentenced as under:-

Sr.No.

Particulars

Term of

imprisonment

Fine

In the event default in

payment of

of

fine

1.

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2.

Nirmal Kumar Agarwal @ Nirmal Agarwal

a) U/s 120B, 120B r/w 420 IPC-Four (4) years rigorous  
imprisonment

a) U/s 120B, 120B r/w 420 IPC- Rs.10,00,000/- (Rs.Ten Lakhs  
Only)

a) Four (4) months simple imprisonment.

b) U/s 420 IPC - Four (4) years rigorous imprisonment.

b) U/s 420 IPC - Rs. 10,00,000/- (Rs. Ten Lakhs Only).

b) Four (4) months simple imprisonment.

c) U/s 471 IPC - Four (4) years rigorous imprisonment.

c) U/s 471 IPC - Rs. 10,00,000/- (Rs. Ten Lakhs Only).

c) Four (4) months simple imprisonment.

3.

Mahesh Kumar Agarwal @ Mahesh Kumar Agarwal

a) U/s 120B, 120B r/w 420 IPC-Four (4) years rigorous imprisonment

a) U/s 120B, 120B r/w 420 IPC- Rs.10,00,000/- (Rs.Ten Lakhs Only)

a) Four (4) months simple imprisonment.

b) U/s 420 r/w

511 IPC – Three years

(3) and Six (6) months rigorous imprisonment.

b) U/s 420 r/w 511 IPC - Rs. 10,00,000/- (Rs. Ten Lakhs Only).

b) Four (4) months simple imprisonment.

c) U/s 471 IPC - Four (4) years rigorous imprisonment.

c) U/s 471 IPC - Rs. 10,00,000/- (Rs. Ten Lakhs Only).

c) Four (4) months simple imprisonment.

4. The other convict convicted vide the impugned judgment and the impugned order on sentence is M/s Adhunik Corporation Limited of which Mahesh Kumar Agarwal, i.e., appellant in CrI.A. No. 189/2022 is the Managing Director and Nirmal Kumar Agarwal, i.e., the appellant in CrI.A. No. 192/2022 is one of the promoters/Directors thereof .

5. It has been observed vide paragraph 43 of the impugned judgment that the allegations against the appellants were that they had made misrepresentations and filed forged and fabricated documents before the MoS, MoC and Screening Committee and by inducing the MoS, Screening Committee, MoC, Government of India to believe these misrepresentations to be true and forged documents to be genuine had got allotted the New Patrpara Coal Block in favour of M/s Adhunik Corporation Ltd. from MoC, Government of India.

6. Charges framed against the three accused i.e., M/s Adhunik Corporation Limited, Mahesh Kumar Agarwal, i.e., appellant in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., the appellant in CrI.A. No. 192/2022 were to the effect as mentioned in para 44 to 47 of the impugned judgment

"44. Charge: - Charge under section 120-B and under Section 120- B read with Section 420 IPC was framed against A-1, A-2 and A-3 as under: -

That during the year 2003-06 at West Bengal, Orissa, Chattisgarh, Delhi and other places, you all i.e. M/s. Adhunik Corporation Ltd., Nirmal Kumar Agarwal and Mahesh Kumar Agarwal entered into a criminal conspiracy to cheat Ministry of Coal, Government of India so as to procure allocation of a captive Coal Block, in favour of M/s. Adhunik Corporation Ltd. by adopting various illegal means viz by making false claims about the existing production capacity of Sponge iron Plant of M/s Adhunik Corporation at Durgapur, West Bengal and also submitted false Project Report allegedly prepared by M/s. Dimensions Engineering & Consultants Pvt. Ltd., made false claim about appointment of M/s. ITC as consultants for detailed engineering and consultancy supporting it with false and forged letter dated 18.04.2005 i.e. purchase order placed to M/s ITC by M/s ACL beside making false claim about placing of purchase order with M/s. Beekay Engineering Corporation for purchase of 2 kilns of 350 TPD each and submitted false and forged acknowledgment issued by Mis Beekay Engineering Corporation in this regard and also submitted a false and forged application claiming to have applied to State Pollution Control Board, Orissa seeking to establish DRI and Captive Power Plant at Kuarmunda, Sundargarh Distt. i.e., letter dated 17.02.2004 addressed to the Member Secretary, State Pollution Control Board, Orissa, etc. [All these claims made to Ministry of Steel and Ministry of Coal have been discussed in detail in the order on charge dated 06.02.2017] and by way of various acts of omission and commission amounting to criminal conspiracy and cheating by the company and its directors and you all thereby committed the offence of criminal conspiracy being punishable u/s 120-B IPC and within my cognizance.

Secondly, during the aforesaid period and in furtherance of the common object of the criminal conspiracy as described above you all did various acts of cheating as described above and also discussed in order on charge dated 06.02.2017 and qua which substantive charges have been framed separately and you all thereby committed offences punishable u/s 120-B r/w 420 IPC and within my cognizance.

45. Charge under Section 420 of IPC was framed against A-1, A-2 and A-3 as under: -

That you all i.e. M/s. Adhunik Corporation Ltd., Nirmal Kumar Agarwal and Mahesh Kumar Agarwal during the year 2003-06 at West Bengal, Orissa, Chattisgarh, Delhi and other places in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) hatched by you all cheated Ministry of Coal, Government of India by dishonestly or fraudulently making false claims about the existing production capacity of Sponge iron Plant of M/s Adhunik Corporation at Durgapur, West Bengal and also submitted false Project Report allegedly prepared by M/s. Dimensions Engineering & Consultants Pvt. Ltd., made false claim about appointment of M/s. ITC as consultants for detailed engineering and consultancy supporting it with false and forged letter dated 18.04.2005 i.e. purchase order placed to M/s ITC by M/s ACL beside making false claim about placing of purchase order dated 15.02.2005 with M/s. Beekay Engineering Corporation for purchase of 2 kilns of 350 TPD each and submitted false and forged acknowledgment allegedly issued by M/s Beekay Engineering Corporation dated 21.02.2005 in this regard and also submitted a false and forged application claiming to have applied to State Pollution Control Board, Orissa seeking to establish DRI and Captive Power Plant at Kuarmunda, Sundargarh Distt. i.e., letter dated 17.02.2004 addressed to the Member Secretary, State Pollution Control Board, Orissa, etc.[All these claims made to Ministry of Steel and Ministry of Coal have been discussed in detail in the order on charge dated 06.02.2017] and thereby induced Ministry of Coal, Govt. of India to allocate "Patrapara" coal block in favour of M/s. Adhunik Corporation Ltd. and you all thereby committed offence u/s 420 IPC and within my cognizance.

46. Charge under Section 471 of IPC was framed against Nirmal Kumar Agarwal as under: -

That you Nirmal Kumar Agarwal, Director M/s. Adhunik Corporation Ltd., during the year 2003-06 dishonestly or fraudulently used as genuine false and forged purchase order dated 18.04.2005 having been placed to M/s ITC appointing them as consultant for detailed engineering and consultancy for your proposed iron plant at Sundargarh, Orissa and also dishonestly or fraudulently used a purchase order dated 15.05.2005 stated to have been placed to M/s Beekay Engineering Corporation for purchase of 2x350 kilns and an acknowledgement letter dated 21.02.2005 allegedly issued by M/s Beekay Engineering Corporation under the signatures of Sh. K. L. Agrawal, as genuine and also dishonestly and fraudulently used the letter dated 17.02.2004 stated to have been submitted to Member Secretary, State Pollution Control Board, Orissa for obtaining consent to establish DRI and captive power plant at Sundargarh, Orissa, knowing fully well that the aforesaid documents were not genuine and you had reason to believe them to be forged and you thereby committed an offence u/s 471 IPC and within my cognizance.

47. Charge under Section 471 IPC was framed against Mahesh Kumar Agarwal, as under:-

That you Mahesh Kumar Agarwal, Director M/s. Adhunik Corporation Ltd., during the year 2003-06 dishonestly or fraudulently used a false and forged TEFR stated to have been prepared by M/s Dimension Engineering & Consultants Pvt. Ltd. for your proposed sponge iron plant at Sundargarh, Orissa knowing fully well that the said TEFR was not genuine and you had reason to believe the same to be a false and forged document and you thereby committed an offence u/s 471 IPC and within my cognizance.”

7. It has been sought to be submitted on behalf of the appellants that the charges held to have been proved against the appellants, i.e., Mahesh Kumar Agarwal, i.e., appellant in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., the appellant in CrI.A. No. 192/2022 have in fact not been substantiated as per record. The said aspect is a matter to be considered at the time of hearing of the appeals.

8. Presently, both the appellants, i.e., Mahesh Kumar Agarwal, i.e., appellant in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., the appellant in CrI.A. No. 192/2022 submit that they do not have any previous adverse antecedents, that they are not flight risks and there is no scope of tampering with the evidences in as much as they have both since been convicted. Inter alia, it has been urged on behalf of the appellants/applicants, i.e., Mahesh Kumar Agarwal, i.e., applicant of CrI M.B. No. 513/2022 in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., applicant of CrI.M.B No. 514/2022 in CrI.A. No. 192/2022, that they have faced a trial from 2014 which has culminated into conviction vide the impugned judgment dated 21.4.2022 with the applicants having been sentenced vide the impugned order on sentence dated 25.4.2022 and that during the entire period from the commencement of the trial by the filing of the charge sheet dated 30.11.2015 till their conviction on 21.4.2022 for more than 6 years the applicants, i.e., Mahesh Kumar Agarwal, i.e., applicant of CrI M.B. No. 513/2022 in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., applicant of CrI.M.B No. 514/2022 in CrI.A. No. 192/2022 had not been arrested and were on bail and have not misused their liberty in any manner.

9. The applicants, , i.e., Mahesh Kumar Agarwal, i.e., applicant of CrI M.B. No. 513/2022 in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., applicant of CrI.M.B No. 514/2022 in CrI.A. No. 192/2022 submit that they are based in Kolkata and have deep roots in society. The applicant Mahesh Kumar Agarwal, submits that he is actively involved in social service, is a member of the Merchant Chamber of Commerce, FICCI, Friends of Tribal Society, Salt Lake, Sanskritik Sansad, Lok Sanskriti, Rajasthan Nawyuwak Sangh and Apna Pariwar Global and has a track record of setting up the first iron and steel industries in West Bengal in the year 2001 in a backward area, which has provided enormous job opportunities in that area providing employment to nearly 200 persons. He further submits that he has set up also several other industries in the eastern

part of India and the incarceration of the applicant would adversely affect his business prospects and thus cause consequential suffering to the employees of the applicant and to their families who would be affected.

10. Both applicants submit that their mother is ailing and aged 91 years has multiple ailments and is a patient of paralysis since 1994 and is completely bed ridden and also a heart patient and also suffering from neurological disorders. The applicant Mahesh Kumar Agarwal, i.e., applicant of Crl M.B. No. 513/2022 in Crl.A. No. 189/2022 further submits that he is a patient of high blood pressure and hypertension.

11. The applicant Nirmal Kumar Agarwal, i.e., applicant of Crl.M.B No. 514/2022 in Crl.A. No. 192/2022, apart from making submissions qua the ailment of his mother, he being the brother of the co-convict Mahesh Kumar Agarwal, i.e., applicant of Crl M.B. No. 513/2022 in Crl.A. No. 189/2022, submits that his wife is dependent on him, that he, i.e., Nirmal Kumar Agarwal, i.e., applicant of Crl.M.B No. 514/2022 in Crl.A. No. 192/2022 is an industrialist providing employment to 4000 persons and their families who are dependent on him for their livelihood, that he is a heart patient and has undergone a surgery placing a stent/Angioplasty treatment in the year 2013, that he is a respectable member of society and cooperated during investigation and is responsible for upliftment of his family and furthermore, his son is to be married on 31.5.2022.

12. The status report that the CBI has submitted does not dispute the condition of the mother of the applicants nor the medical condition of the applicants themselves. The Nominal Rolls that have been received qua both the applicants indicate that there are no previous adverse antecedents against them and that their jail conduct has been satisfactory.

13. It has been submitted on behalf of the applicants and not refuted on behalf of the CBI and is borne out through the placement on the record of the fine receipts of the fine deposited by the applicants, i.e., Mahesh Kumar Agarwal, i.e., applicant of Crl M.B. No. 513/2022 in Crl.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., applicant of Crl.M.B No. 514/2022 in Crl.A. No. 192/2022 that the fines imposed vide the impugned order on sentence dated 25.4.2022 to the tune of Rs.30,00,000/- each has been deposited by both the applicants as well as by the co-convict, ie., accused No.1 M/s Adhunik Corporation Limited vide receipts bearing number 466237,466236 and 466235 all dated 27.4.2022.

14. Inter alia it has been submitted on behalf of the applicants, i.e. Mahesh Kumar Agarwal, applicant of Crl.M.B. No. 513/2022 in Crl.A. No. 189/2022 and Nirmal Kumar Agarwal, applicant of Crl.M.B. No.514/2022 in Crl.A.No. 192/2022, that they are first time offenders and that the appeal is not likely to be heard in the near future and thus their continued incarceration would be unjust.

15. On behalf of the applicant Mahesh Kumar Agarwal, applicant of Crl.M.B. No. 513/2022 in Crl.A. No. 189/2022, a catena of verdicts was relied upon i.e.,:

- \* Anil Ari V. State of West Bengal; MANU/SC/0148/2009
- \* Angana and Anr. V. State of Rajasthan; (2009) 3 SCC 767
- \* Bhagwan Rama Shinde Gosain and Ors. V. State of Gujarat; MANU/SC/0347/1999
- \* Smt. P.M.Singh V. CBI ; 2013 SCC Online Del 3835
- \* Pritpal Singhal V. State of Delhi; (1999) 1 SCC 169
- \* Kashmira Singh V. State of Punjab (1977) 4 SCC 291
- \* Ranjit Kumar V. State; 2012 SCC OnLine Del 100'
- \* Chaman Lal & Ors. V. CBI, 2013 (135) DRJ 699
- \* AVUT V. Sushil Ansal and Anr.; (2017) 3 SCC 788

to contend to the effect that the parameters for grant of bail in terms of Sections 437 & 439 of the Cr.P.C., 1973, equally govern the grant of suspension of sentence in terms of Section 389(1) of the Cr.P.C., 1973 to a convict who has assailed the impugned judgment of conviction and the impugned order on sentence.

16. Inter alia, it was contended on behalf of the said applicant that the prolonged litigation in the instant case of about 6 ½ years has itself been a suffering to the applicant.

17. Reliance was also placed on behalf of the said applicant, i.e., Mahesh Kumar Agarwal, applicant of CrI.M.B. No. 513/2022 in CrI.A. No. 189/2022, on the verdicts in:

- \* K.C. Sareen V. CBI, Chandigarh; (2001) 6 SCC 584
- \* Suresh Kumar & Ors. V. State; 2001 (10)SCC 338
- \* Atiquor Rehman V. N.C.T. of Delhi; 1998 [1] JCC 165
- \* Sheetal (In JC) V. State; 2010 [1] JCC 5
- \* Hindustan Petroleum Corporation Ltd. V. Dilbahar Singh; 2014 (9) SCC 78
- \* Sita Ram and Ors. V. State of Uttar Pradesh; (1979) 2 SCC 656
- \* Shiv Nandan Dixit V. State of U.P. (2003) 12 SCC 636,

to contend to the effect that each case has to be considered on the basis of its own facts and circumstances but discretion in terms of Section 389 of the Cr.P.C., 1973, is to be exercised judiciously and no strait jacket formula can be applied in exercising the said judicial discretion. It has also been submitted on behalf of the said applicant that the catena of verdicts relied upon on behalf of the said applicant/appellant brings forth clearly that there is no embargo to the grant of suspension of sentence qua offences punishable under sections, u/s 120B IPC,

120B IPC read with Section 420 of the Indian Penal Code, 1860, 420 IPC read with Section 511 IPC and 471 of the IPC, for suspension of sentence has even been granted in cases where the accused have been convicted for the commission of the offences punishable under Section 376 of the Indian Penal Code, 1860 and even under the Prevention of Corruption Act, 1988. It was further submitted on behalf of the said applicant that the provisions of the Prevention of the Corruption Act, 1988, have not even been invoked in the instant case and there has been no monetary loss whatsoever to the exchequer.

18. It has inter alia been submitted on behalf of the said applicant that the verdicts of this Court in Anand Mallick V. Central Bureau of Investigation and Vikash Patni V. Central Bureau of Investigation in Crl. Appeal nos. 1220/2018 and 1221/2018 whereby Crl.M.B No. 1901/2018 and Crl.M.B No. 1902/2018 had respectively been filed seeking suspension of sentence qua offences punishable under Section 120B r/w Section 420 of the Indian Penal Code, 1860 and r/w Section 13 (1)(d) (ii) and 13 (1)(d) (iii) of the Prevention of Corruption Act 1988, the sentence of the applicants therein had been suspended subject to the terms and conditions as imposed by this Court.

19. Reliance was also placed on behalf of the said applicant on the verdict of this Court dated 5.8.2020 in Bhoori Singh V. CBI; Crl.A. No. 355/2020 to contend to similar effect.

20. Furthermore, a submission was made on behalf of the said applicant that in the other coal matters in Crl.A.Nos. 413/2016, 414/2016, wherein also the convicts therein had been sentenced to four years of rigorous imprisonment vide orders dated 13.5.2016 and in Crl.A. No. 1221/2018 two convicts therein had been sentenced to four years of rigorous imprisonment vide orders dated 18.2.2019. The sentences imposed had been allowed to be suspended during the pendency of the appeals which are still pending.

21. A list of details of the suspension of sentences awarded in coal block cases by this Court has been submitted on behalf of the said applicant to the effect:

Sr.

No.

Case Title

Convict

Imprisonment

Date of Appeal in the Hon'ble HC & Appeal No.

Date of Suspension of Sentence by the

Hon'ble HC

NDOH

1

CBI V.

Jharkhand Ispat Ltd & Ors.

R.S.Rungta

4 year RI

29.04.2016

(CRL.A 413/2016)

13.05.2016

14.12.2022

R.C.Rungta

4 year RI

29.04.2016

(CRL.A 414/2016)

13.05.2016

14.12.2022

2

CBI V.

Rathi Steel & Power Ltd. & Ors.

Pradeep Rathi

3 year RI

17.08.2016 (CRL.A 760/2016)

22.08.2016

Udit Rathi

3 year RI

17.8.2016

CrI.A 764/2016

22.08.2016

Kushal

Agrawal

2 year RI

17.8.2016

Crl.A. 759/2016

22.08.2016

3

M/s Kamal Sponge

Steel & Power Ltd. & Ors.

Pawan Kumar

Ahluwalia

3 year RI

15.6.2017 (Crl.A.622/2017)

10.07.2017

16.09.2022

HC Gupta

2 year RI

06.07.2017

(Crl. A. 642/2017)

10.07.2017

16.09.2022

K.S. Kropcha

2 year RI

14.07.2017

(Crl. A. 688/2017)

14.07.2017

16.09.2022

K.C. Samra

2 year RI

14.07.2017

(Crl. A. 687/2017)

14.07.2017

16.09.2022

4

CBI V.

M/s Vini

Iron & Steel Udyog Ltd. & Ors.

Sh. Vijay Joshi

3 year RI

20.12.2017

(Crl. A. 1170/2017)

20.12.2017

20.04.2022

HC Gupta

3 year RI

25.03.2018

(Crl. A. 141/2018)

06.02.2018

29.08.2022

Ashok Kumar Basu

3 year RI

19.01.2018 (Crl.A. 66/2018)

19.01.2018

29.08.2022

Sh. Madhu Koda

3 year RI

02.01.2018

(Crl.A. 1186/2017)

22.01.2018

Disposed Off

5

CBI Vs.

M/s Gondwan a Ispat

Ltd &

Ors.

Sh. Ashok Daga

4 year RI

03.05.2018

(Crl.A. 1186/2017)

Interim Bail Granted on 22.01.2018

6

CBI Vs.

M/s Vikash Metal & Power Ltd & Ors.

Vikash Patni

4 year RI

10.12.2018

(Crl. A. 1221/2018)

18.02.2019

Anand Mallick

4 year RI

10.12.2018

(Crl. A. 1221/2018)

18.02.2019

HC Gupta

3 year RI

22.01.2019 (Crl.A. 72/2019)

29.01.2019

K.S. Kropcha

3 year RI

21.01.2019 (Crl.A. 62/2019)

21.01.2019

K.C. Samria

3 year RI

21.01.2019

(Crl. A. 67/2019)

21.01.2019

7

CBI Vs.

M/s Pawanjay steel and Power ltd & Ors.

Gyanchand Prasad Agarwal

3 year RI

13.12.2019

(Crl.A. 1416/2019)

13.12.2019

Umesh Prasad Agarwal

3 year RI

13.12.2019

(Crl.A. 1415/2019)

13.12.2019

S.K. Kanungo

2 year RI

10.12.2019

(Crl.A. 1404/2019)

10.12.2019

8

CBI Vs.

M/s. Castron Technologies Ltd.& Ors.

Mahendra Kumar Agarwalla

3 year RI

25.11.2020 (Crl.A. 590/2020)

25.11.2020

Dilip Ray

3 year RI

27.10.2020 (Crl.A. 533/2020)

27.10.2020

Pradip Kumar

Banerjee

3 year RI

29.11.2020 (Crl.A. 574/2020)

25.11.2020

Nitya Nand Gautam

3 year RI

24.11.2020 (Crl.A.585/2020)

25.11.2020

9

CBI Vs.

M/s DOMCO

Pvt. Ltd. & Ors.

Vasant Diwakar Manjrekar

3 year RI

18.11.2021 (Crl.A. 349/2021)

18.11.2021

25.04.2022

Parmananda Mandal

3 year RI

18.11.2021 (Crl.A. 349/2021)

18.11.2021

25.04.2022

Sanjay Khandelwal

3 year RI

08.11.2021 (Crl.A. 321/2021)

08.11.2021

25.04.2022

22. The contentions that were raised on behalf of the applicant Mahesh Kumar Agarwal, applicant of CrI.M.B. No. 513/2022 in CrI.A. No. 189/2022, were adopted on behalf of the applicant Nirmal Kumar Agarwal, applicant of CrI.M.B. No.514/2022 in CrI.A.No. 192/2022 with it inter alia being submitted that the son of Nirmal Kumar Agarwal, applicant of CrI.M.B. No. 514/2022 in CrI.A.No. 192/2022 is to be married on 31.5.2022 at Kolkata and this aspect has been verified by the CBI.

23. The CBI vide its status report dated 17.5.2022 has vehemently opposed the prayer made by the applicant seeking the suspension of sentence submitting to the effect that vide the impugned judgment dated 21.4.2022 there has been a meticulous analysis of the issues raised in the case based on material on the record in the form of cogent evidence backed by legal precedents whereafter the learned Trial Court had come to the conclusion that the applicants were guilty of the offences of which they have been charged and that the case in which the applicants have been convicted relates to Coal Scam investigation which has been ordered and is being monitored by the Hon'ble Supreme Court and that these Coal Scam cases had a serious impact on the economy of the country.

24. It has been submitted on behalf of the CBI that the process undertaken by the screening committees had led to a situation where allocations were arbitrarily made to non-deserving companies based on misrepresentation made by them regarding the state of preparedness which had further allowed misuse of an important national resource.

25. The CBI has further submitted that only because there would be a probable delay in the disposal of the appeal, the same does not suffice to grant bail or grant suspension of sentence to the applicants nor does it confer any automatic right thereon on the applicants.

26. The CBI has further submitted to the effect that the instant case in which the applicants have been convicted relates to the commission of an economic offence which has to be viewed with a different approach in as much as these offences cause irreparable harm to the economic system with reliance having been placed on behalf of the CBI in the case SFIO V. Nitin Johri & Anr. (2019) 9 SCC 165. Reliance was also placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in Ram Narain Popli V. Central Bureau of Investigation (2003) 3 SCC 641 to contend to the effect that white collar crimes affect the fibre of the country's economic structure and cannot be dealt with similarly as other offences in as much as in these cases all that is sought to be achieved by the accused/convict is to get private gain at the cost of public money then leading to economic disaster. The CBI places reliance on the verdict of the Hon'ble Supreme Court in Ahmed Hussein Vali Mohammed Saiyed Vs. State of Gujarat; (2009) 7 SCC 254 to contend to the effect that the mere taking of a sympathetic view on account of lapse of time in respect of offences of the kind of economic offences would be counter productive in the long run.

## CONCLUSION

27. On a consideration of the submissions that have been made on behalf of either side, without adverting to the merits or demerits of the conviction of the applicants and the sentences imposed on them vide the common impugned judgment dated 21.4.2022 and vide the common impugned order on sentence it being apparent that it does not appear that the convicts herein are likely to evade the process of law in as much as despite their not having been released neither before the institution of the charge sheet nor thereafter in as much as they were not incarcerated at any stage coupled with the factum that the period of more than 6 ½ years has lapsed from when the trial commenced, coupled with the factum that the fine imposed on the applicants has been deposited, and taking into account the factum that there is no strait jacket formula for consideration of applications under Section 389 of the Cr.P.C., 1973 qua offences for which convicts are convicted, for all such applications have to be considered in accordance with law; there being no adverse antecedents against the applicants, in the facts and circumstances of the instant case, it is considered appropriate to suspend the operation of the sentence against the applicants during the pendency of the appeal, i.e. CrI.A. No. 189/2022 and 192/2022 subject to applicants furnishing a personal bond in the sum of Rs.1,50,000/- each with one surety of the like amount to the satisfaction of the Registrar General of this Court and the impugned order on sentence qua the two appellants, i.e., Mahesh Kumar Agarwal, i.e., applicant of CrI.M.B. No. 513/2022 in CrI.A. No. 189/2022 and Nirmal Kumar Agarwal, i.e., applicant of CrI.M.B No. 514/2022 in CrI.A. No. 192/2022 is kept in abeyance till disposal of the appeals with directions:

- \* that the applicants shall not leave the country without permission of this Court and an intimation to this effect be sent to the FRRO and all airports of the country;
- \* that the applicants shall keep their mobile phones on and drop a pin on the Google map to ensure that their location is available to the Investigating Officer of the case;
- \* the applicants shall commit no offence whatsoever and
- \* that the applicants shall not make any contact with the prosecution witnesses.

28. The CrI.M.B. No. 513/2022 and 514/2022 are disposed of.