

(2016) 11 DEL CK 0015

In the Delhi High Court

Case No : Crl. M.B. 1420 of 2016 in Crl. A. 715 of 2016

Rajinder Singh Rana

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), Section 13(2), Section 7

Citation : (2016) 10 ADDelhi 163

Hon'ble Judges : S.P. Garg, J.

Bench : Single Bench

Advocate : Mr. Sanjeev Bhandari, SPP, for the Respondent; Arvind Nigam, Senior Advocate with Mr. K.K. Manan, Senior Advocate, Mr. Harsh K. Sharma, Ms. Ragini, Ms. Vaibhavi Sharma, Ms. Mehak Nakra, Mr. Rohit Gaur and Mr. Raghav Ghei, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

S.P. Garg, J. - The appellants seek suspension of sentence till the disposal of appeals. Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file.

3. The appellants ? Rajinder Singh Rana (A-1) and Milan Kumar Dey (A-2) were convicted under Section 120B IPC read with Sections 7, 13(1)(d) read with Section 13(2) of PC Act, 1988 and also under Section 7 and 13(1)(d) read with 13(2) of PC Act, 1988.

4. The appellant ? Raju Dhanapal Raj (A-3) was convicted under Section 120B IPC read with Sections 7, 13(1)(d) read with Section 13(2) of PC Act, 1988.

5. A-1 and A-2 were sentenced to undergo various prison terms maximum RI for five years with fine Rs. 1 lac each under Section 120B IPC read with Sections 7, 13(1)(d) read with Section 13(2) of PC Act, 1988.

6. A-3 was sentenced to undergo various prison terms maximum RI for five years

with fine Rs. 1 lac each under Section 120B IPC read with Sections 7, 13(1)(d) read with Section 13(2) of PC Act, 1988.

7. Admitted position is that the appellants were on bail during trial. At present, they are in custody since 18.07.2016.

8. A-1's Nominal Roll dated 17.09.2016 reveals that he has undergone one month and twenty-eight days incarceration besides remission for fourteen days as on 16.09.2016. Though he is involved in other two cases but is not a previous convict. His overall jail conduct is satisfactory.

Sentence Order records that he is aged around 62 years and is a cancer patient. He has lost his son during the course of trial. He is the only bread-earner of the family consisting of his wife and there is none else to look after her. He has unblemished record in his entire carrier as a legal professional.

9. Report regarding the medical condition has been received. It records that A-1 is a diagnosed case of carcinoma esophagus and was hospitalized on 25.07.2016 for 3rd cycle of Chemotherapy which was administered on 26.07.2016. The next cycle of Chemotherapy was due on 08.10.2016. He was admitted at Rajiv Gandhi Cancer Institute and Research Centre. He continues to be admitted there. Report further reveals that on 28.09.2016, he complained of dysphagia, difficulty in swallowing for which he underwent UGI endoscopy on 29.09.2019. On 30.09.2016, he complained of chest pain, persistent dysphagia and severe weakness.

10. A-2's Nominal Roll dated 16.09.2016 reveals that he has undergone one month and twenty-seven days incarceration besides remission for fourteen days as on 15.09.2016. He is not involved in any other criminal case and is not a previous convict. His overall jail conduct is satisfactory. He is aged around 51 years. Sentence Order records that he is the only bread-earner of the family consisting of his wife and son aged around 21 years studying at Pune. He is a designated Senior Advocate from Jharkhand. He is suffering from hyper tension and diabetes.

11. A-3's Nominal Roll dated 16.09.2016 reveals that he has undergone one month and twenty-seven days incarceration besides remission for fourteen days as on 15.09.2016. Though he is involved in other two cases but is not a previous convict. His overall jail conduct is satisfactory. Sentence Order records that he is aged around 64 years and is a practicing lawyer for the last about 35 years. There is no blemish in his entire profession. He is an acute diabetic patient and the only bread-earner of the family consisting of his wife. His son abandoned him during trial and started living separate.

12. CBI registered the present Regular Case on the basis of preliminary enquiry against the appellants and one Yash Pal Singh, Assistant Professor. It is alleged that during the year 2010 the convicts entered into a criminal conspiracy and by abusing their official position demanded and obtained bribe amount of Rs. 3 lacs

from Prashant Garg, Chairman of School of Law Studies, Bulandsahar, U.P. for expediting the process of recognition/affiliation. They conspired to obtained Rs. 3 lacs from Prashant Garg for giving factual report in respect of law college. After negotiation between all the convicts, A-1 accepted bribe of Rs. 2.5 lacs at his residence on 03.11.2010. Rs. 50,000/- more were paid on 08.11. 2010 by Prashant Garg.

13. Undisputedly, appellants' conviction is primarily based upon the testimony of PW-3 (Prashaant Garg) who turned approver. The prosecution relied upon telephonic conversation to corroborate his statement.

14. By an order dated 27.10.2016, in CrI. M.B. 1465/2016 in CrI. A. 741/2016 "Yash Pal Singh v. CBI" this Court granted suspension of sentence till the disposal of appeal.

15. It was specifically put to the learned counsel for CBI as to since when the telephones of the appellants were under surveillance. The response was that it were from 27.07.2010 to 24.01.2011. The inspection of the college took place on 29.10.2010 and the alleged bribe was given on 03.11.2010. Learned counsel for CBI was unable to respond as to why no immediate steps were taken by CBI to apprehend the appellants when they had come to know about their involvement in the crime due to telephonic conversation kept under surveillance since 27.07.2010. Admittedly, the CBI did not conduct any raid to apprehend the culprit red-handed. The tainted money was not recovered during investigation.

16. Learned CBI counsel was asked to disclose if any of the prosecution witnesses was able to identify the appellants' voice in the conversation recorded on telephones kept under surveillance. He fairly admitted that none of the prosecution witnesses was able to identify the appellants' voice in the said conversation. No plausible explanation has been offered for delay in arrest of the appellants.

17. Considering the facts and circumstances of the case and the fact that the appeals are not likely to be taken up for hearing shortly, the remaining period of substantive sentence of the appellants is suspended till the disposal of the appeals on furnishing personal bonds in the sum of Rs. 1 lac with one surety each in the like amount to the satisfaction of the Trial Court subject to deposit of fine (if any). The appellants, however, shall not travel abroad without prior permission of the Trial Court; they shall surrender their pass-ports (if any) before the Trial Court; the appellants shall intimate their latest addresses and contact numbers (if any) and shall inform the Investigating Agency as and when there is any change; the appellants shall appear in person before the Court as and when so directed.

18. The bail applications stand disposed of.

19. Copy of the order be given "dasti" under the signatures of the Court Master.

CrI. A. 715/2016 & CrI. M.A. No. 11700/2016, CrI. A. 726/2016 & CrI. A.

716/2016 & Crl. M.A. No. 11703/2016 To be listed in due course.