

CA No. 16/2019

S.S. Ahluwalia vs. Central Bureau of Investigation

26.09.2019

Present: Sh. Mahipal and Sh. Akash Nagar, Id. Counsels for the appellant/convict S.S. Ahluwalia.
Sh. Parmod Singh, Id. PP for the CBI/respondent.
HIO Inspector J. Chandru.

Reply filed on behalf of CBI to application u/s 389 Cr.P.C for suspension of sentence during the pendency of the appeal. Copy supplied.

Report also received from the office of Superintendent, Central Jail No. 2 regarding the medical condition of the appellant/convict. As per the medical status report annexed with the forwarding letter, the general condition of inmate/patient (appellant herein) is stable and he is getting all the prescribed medication from his home, as per the directions of the Court and dispensary at Central Jail -02, Tihar.

The appellant in the present case has been convicted and sentenced u/s 417 r/w section 415 and also section 471 r/w section 467 of the IPC and section 25 of the Arms Act.

In the application u/s 389 Cr.P.C filed on behalf of appellant, it is stated that appellant has been a respectable officer of Indian Administrative Services from 1986 batch and has deep roots in society. He has never been convicted for any offence prior

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to the present case. He is aged about 81 years and is a permanent resident of New Delhi and is not likely to abscond during appeal. The wife of appellant is unemployed and primarily bed ridden and that household of appellant relies solely on the savings of appellant. It is further stated that appellant is suffering from Fibromyositis Sarcocystis and requires a dirt free environment and that he has been admitted in ICU twice due to this disease. He is also suffering from advanced degenerated joint disease of both the knee and had undergone knee replacement in the year 2017. It is further stated that he has faced trial for nearly about 32 years and his conduct has always remained good and he has a good case on merit and is likely to succeed in appeal. It is accordingly prayed that sentence of appellant be suspended during the pendency of the appeal.

The application has been strongly opposed by CBI by filing its reply. While referring to the facts of the case, it is stated that the appellant, then Secretary and Commissioner, Labour and Employment, Kohima, Govt. of Nagaland, while functioning in different capacities in Nagaland and New Delhi during 01.07.1969 to 28.03.1987 amassed huge assets in his name as well as in the name of his family members and relatives. During the search of his premises at New Delhi and Kohima in RC 1/1987/ACU-I New Delhi, which was registered to investigate into the disproportionate assets of the appellant, arms and ammunitions as detailed in para 2 of the reply were recovered. It is alleged that

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though the CBI filed chargesheet on 03.08.1987, charge could be framed against appellant only on 10.02.2010, after a lapse of 23½ years, since appellant filed many petitions before different Court on frivolous grounds and dragged the case for exorbitant period. It is further stated that the wife of appellant is neither bed ridden nor a dependent since property no. F.5, South Extension, Part-II, stands in her name. She also has other immovable and movable assets in her name. It is further alleged that appellant has deliberately concealed the fact that RC 1/1987/ACU-I, New Delhi dated 24.03.1987 u/s 5(2) r/w 5(1)(e) of PC Act and another case no. 5/87/SIU-I New Delhi u/s 85(8) r/w 8(3) of Gold (Control) Act, 1968 are also pending against him. The trial of RC 1/1987/ACU-I New Delhi is in progress and despite Court being willing to give exemption from personal appearance to the appellant, the appellant has expressed his willingness to attend the Id. Trial Court for hearing. As regards the ground of illness, it is stated that though the appellant is in custody since 02.09.2019, there is nothing on record to show that his health has suffered in custody. It is accordingly prayed that the application for suspension of sentence filed on behalf of appellant/convict be dismissed. In support of prayer for dismissal of the application, judgments in case of *State of Maharashtra through CBI vs. Balakrishna, 2012 (12) SSC 384* and *State of Punjab vs. Deepak Mattu AIR 2008 Supreme Court 35* have been relied upon.

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Ld. Counsel for appellant as well as PP CBI have reiterated the averments made in respective application and reply during the course of the arguments.

I have considered the arguments and have also gone through the record as well as judgments produced by Id. Counsel for appellant/convict and CBI.

It is the admitted position that in the instant matter appellant/convict was not arrested after registration of the FIR and the CBI had filed chargesheet without arrest of the appellant/convict. This alone distinguishes the present case from the facts of the two judgments relied upon on behalf of CBI. Further, the appellant/convict in the instant matter continued to remain on bail after being summoned by the Id. Trial Court. At present, the appellant/convict is aged about 81 years. Though it is alleged that appellant delayed the trial by filing petitions before various Courts and dragged the case for exorbitant period, admittedly at no point of time, CBI sought to get the bail of appellant/convict cancelled, during the trial of the case, on this ground. In these facts & circumstances, even if the ground of medical ailment of appellant as well as his wife are not considered, the appellant/convict has made out a case for suspension of sentence and grant of bail to him till the disposal of the appeal.

Looking into the facts and circumstances of the case, the sentence of the appellant/convict S.S. Ahluwalia is suspended till the disposal of the appeal subject to his furnishing bail bond in the sum of Rs. 50,000/- with one surety in the like amount to the

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satisfaction of the Trial Court and upon depositing the entire fine amount in the trial court within a period of five days from today. The appellant would also be required to surrender his passport, if any, in the Court within five days from today and shall not travel out of India without prior permission of the Court. This will allay the apprehension of CBI that appellant / convict may abscond after being released on bail.

Put up for arguments on appeal on **18.10.2019 at 2.00 PM.**

A copy of order be sent to Id. Trial Court along with TCR. The TCR be summoned afresh two days before the next date of hearing.

Copy of order be given dasti to counsel for appellant as prayed for and one copy be also sent to appellant through Superintendent concerned for information.

(Illa Rawat)
Special Judge (PC Act), (CBI-20),
Rouse Avenue Court, New Delhi,
26.09.2019