HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Criminal Appeal No.1413 of 2023

Ganesh Prakash Kumbhare, S/o Late Shri Mohanlal Kumbhare, Aged about 67 years, Then Assistant Mining Officer, Durg, R/o Radha Bhavan, Vijay Nagar, Durg (C.G.)

(In Jail)

---- Appellant

Versus

State of Chhattisgarh, Through Anti-Corruption Bureau, Raipur (C.G.)

---- Respondent

SB

Hon'ble Shri Justice Sanjay K. Agrawal

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15/03/2024	Mr. Abhishek Sinha, Senior Advocate with Mr. Sudeep Verma, Advocate for the appellant. Mr. Afroz Khan, Panel Lawyer for the State / respondent. Heard on I.A.No.1/2023 for suspension of sentence and grant of bail to the appellant during the pendency of this appeal. The appellant stands convicted for offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of ₹ 20,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for six months finding that he has amassed disproportionate property to extent of 240% to his known sources of income. He has challenged the same in this appeal. Case of the prosecution, in brief, is that the appellant during the period from 1-1-2004 to 12-10-2010 while posted as Assistant

	Mining Officer, Durg, amassed an amount of ₹ 2,20,51,378/- which is disproportionate to his known sources of income, and thereby committed the offence. Mr. Abhishek Sinha, learned Senior Counsel appearing for the appellant, submits that the learned Special Judge at para 149 of the judgment has accepted the total income of the appellant, his wife and his son as ₹ 61,59,247/- and thereafter included ₹ 12,84,791/- towards purchase of property (LIG 733) vide Ex.P-94 which was purchased before check period by Smt. Parvati Bai – mother-in-law of the appellant, which could not have been included into the income of the appellant. He further submits that ₹ 13,43,577/- towards construction of house / maintenance at page 159 of the judgment was not in the name of the appellant and similarly, the property valuing ₹ 54,71,338/- & ₹ 5,70,782/- which was the property of his wife Radha Kumhare from separate income has illegally been added as income of the appellant vide Exs.P-87, P-88 & P-275/-. He also submits that the cash recovered i.e. ₹ 37,14,200/- has been shown as expenditure of the accused at serial No.16 (page 159 of the judgment), whereas the said amount was recovered from the house of the appellant where he resided with his wife who had taken the same as advance towards sale consideration from Atmaram Chandel (DW-2) which ought not to have been included in his income in view of the decision of the Supreme Court in the matter of **DSP, Chennai v. K. Inbasagaran**[1]. Similarly, there is no proof of the household goods to the extent of ₹ 24,74,247/-, whether the same were purchased during check period by the appellant, it was the joint house of the appellant and his wife and it is also not proved as to who purchased the said household goods, therefore, it is totally illegal to hold that the same was the expenditure of the appellant or it was in the exclusive possession of the appellant during check period. Investigating Officer Anil Bakshi (PW-53) has admitted that it was the joint family property. As such, the trial Court has wrongly included the assets and expenditure of wife of the appellant Radha Kumhare to the extent of ₹ 1,46,48,147/-, who is an earning member having separate financial identity and therefore her income ought not to have been included and if the said amount is excluded,

1 (2006) 1 SCC 420

	income of the appellant is in accordance with law. He would rely upon the decision of the Supreme Court in the matter of **Krishnanand Agnihotri v. The State of Madhya Pradesh**[2] to buttress his submission. Furthermore, the appellant was in jail for 66 days during trial from 22-7-2014 to 26-9-2014 and thereafter, he is in jail from 28-6-2023 and thus completed 11 months of incarceration and during trial he was on bail. It is not the case of the prosecution that he has misused the liberty granted to him during trial and he has been convicted for the check period from 1-1-2004 to 12-10-2010, at that time, the minimum sentence prescribed for offence under Section 13(1)(e) of the Prevention of Corruption Act was one year and now it has been enhanced by the subsequent amendment with effect from 16-1-2014 and since he had already completed 11 months in jail, which is almost equal to the minimum sentence prescribed and he has recently suffered brain stroke and that hearing of appeal is likely to take some more time, he be granted bail. Mr. Sinha, learned Senior Counsel, also contended that the State has filed document showing that the appellant has suffered brain stroke. Mr. Afroz Khan, learned State counsel, opposes the application and submits that the appellant has amassed disproportionate property of more than 240% to his known sources of income and he is getting proper medical treatment in the hospital. It is a case of Prevention of Corruption Act, therefore, he is not entitled for suspension of sentence and grant of bail. The appellant has seriously challenged the addition of ₹ 12,84,791/- stating that it is the property purchased vide Ex.P-94 by his mother-in-law Parvati Bai and house cost maintenance / repair of ₹ 13,43,577/- stating that it was not in his name and furthermore, serial Nos.4 & 5 of the expenditure as asset by Radha Kumhare, his wife, who is an earning member and having separate financial identity. He has also challenged the recovery of cash amounting to ₹ 37,14,200/- holding it to be the amount of sale consideration of his wife Radha Kumhare, who has been examined as DW-17 and purchaser Atmaram Chandel has also been examined as DW-2. He

2 (1977) 1 SCC 816

	has further questioned the amount included which is the expenditure towards purchase of household articles i.e. ₹ 24,74,247/- which requires serious consideration by this Court. Further, his wife is an earning member and having a separate financial identity. Moreover, the appellant was in jail during trial for 66 days, thereafter, bail was granted and it is not the case of the prosecution that he has misused the liberty granted to him either by tampering the prosecution witnesses or otherwise and still he is in jail from 28-6-2023. In the instant case, check period is from 1-1-2004 to 12-10-2010 and minimum sentence prescribed under Section 13(1)(e) of the Prevention of Corruption Act was one year which was enhanced with effect from 16-1-2014. The appellant had already completed 11 months in jail. The prosecution itself has filed document Ex.R-1 by which the Medical Officer has informed that the appellant is unable to walk and speak and on 5-9-2013, he was referred to Casualty by the Central Hospital, Durg wherein he was advised to CT Scan. In that view of the above-stated facts and considering the medical condition of the appellant, I am of the opinion that it is a fit case where the substantive jail sentence imposed upon the appellant deserves to be suspended and he should be released on bail during the pendency of this appeal. Accordingly, I.A.No.1/2023 is allowed. It is directed that substantive jail sentence imposed upon the appellant shall remain suspended during the pendency of this appeal and he shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety in the like sum to the satisfaction of the trial Court for his appearance before the Registry of this Court on **1-5-2024**. He shall thereafter appear before the trial Court on a date to be given to him by the Registry of this Court and shall continue to appear before the trial Court on all such other subsequent dates as are given to him in this behalf by the said Court, till the disposal of this appeal. Certified copy as per rules. Sd/- (Sanjay K. Agrawal) Judge

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