

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Appeal (SJ) No. 284 of 2019**

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|---------------------------------------|------------|
| Ramanand Ram @ Ramannand Ram ...      | Appellant  |
| Versus                                |            |
| The Union of India through C.B.I. ... | Respondent |

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**CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

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| For the Appellant | : Mr. R.S. Mazumdar, Sr. Advocate |
| For the C.B.I.    | : Mr. Rohit Sinha, Advocate       |

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**Order No.11 Dated- 22.06.2021**  
**I.A. No.3670 of 2020**

Heard the parties through video conferencing.

It is submitted by the learned Senior Advocate appearing for the Applicant-Appellant that this interlocutory application has been filed with a prayer for releasing the Applicant-Appellant on bail and suspending the execution of his sentence, during the pendency of this appeal. It is submitted by the learned Senior Advocate appearing for the Applicant-Appellant that the Applicant-Appellant is not ready for hearing of the appeal on merits. It is next submitted that earlier the Applicant-Appellant moved before this Court in I.A. No.5589 of 2019 *inter alia* praying for grant of provisional bail to the Applicant-Appellant for a period of two months and the said application was heard on 25.06.2019 and the Applicant-Appellant was granted provisional bail till 10.7.2019 and consequent upon that the Applicant-Appellant surrendered before the learned court below on 11.07.2019. It is further submitted by the learned Senior Advocate appearing for the Applicant-Appellant that the Applicant-Appellant was in custody for more than three months during the trial and has been languishing in custody since 22.02.2019. It is next submitted by the learned Senior Advocate appearing for the Applicant-Appellant that the impugned judgment of conviction and order of sentence is bad in law. Hence, the Applicant-Appellant be admitted to bail and execution of his sentence be suspended.

Mr. Rohit Sinha, learned counsel for the Central Bureau of Investigation on the other hand vehemently opposed the prayer for bail and suspension of execution of the sentence and submitted that for suspension of execution of the sentence and granting bail to the Applicant-Appellant on the ground for undergoing half of the maximum sentence, following twin conditions are required to be satisfied:

- (i) There is no likelihood of the appeal being taken up in near future; and
- (ii) The appellant has undergone half of the maximum sentence imposed upon him in that particular case against the judgment of which the appeal has been preferred.

But as in this case neither of the two conditions is existing. It is next submitted by Mr. Sinha, that the appeal was fixed for hearing on 02.03.2021 but no one turned up on behalf of the appellant for hearing of the appeal and on 08.04.2021 when the appeal was fixed for hearing, the learned counsel for the appellant prayed for time. It is next submitted by Mr. Sinha that this appeal can be heard and disposed of finally as and when the appellant gets ready for hearing of the appeal and the respondent is also ready for hearing of the appeal. Hence, as the appellant is not ready for hearing of the appeal certainly, he cannot take the plea to be released on bail or the execution of sentence be suspended. It is then submitted by Mr Sinha that as submitted by the learned counsel for the Applicant-Appellant today, the Applicant-Appellant is not ready for hearing of the appeal on merits even today though the appeal is fixed for hearing on merits today also but the Applicant-Appellant obviously being aware that there is no merit in this appeal is not getting ready for hearing of the appeal on its merit and is only interested for bail and suspension of execution of the sentence imposed upon him without serving out the sentence imposed upon him by hook or crook. It is also submitted that in view of this conduct of the appellant and the facts of the case, there is

every chance of the Applicant-Appellant absconding if released on bail. Hence, it is submitted that the Applicant-Appellant ought not to be admitted to bail.

Having heard the submissions made at the Bar, it is pertinent to mention here that the Hon'ble Supreme Court of India has granted bail to the co-accused- Ex-Minister Md. Ilyas Hussain @ Md Illiyas in Cr. Appeal No.810 of 2020 arising out of Special Leave Petition (Cr.) No.5022 of 2020 but perusal of the said order reveals that in the said order, it has been mentioned that an application under Section 389 of Code of Criminal Procedure was filed by the co-convict- Ex-Minister Md. Ilyas Hussain @ Md Illiyas before this Court and the prayer in that behalf was rejected by this Court and out of maximum imprisonment of 5 years, the said appellant-petitioner has completed more than 2 years and 5 months of actual imprisonment and on that account, the trial court was directed to release the co-accused- Md. Ilyas Hussain @ Md. Illiyas subject to the such condition as the trial court may deem fit.

It is pertinent to mention here that the co-convict- Md. Ilyas Hussain @ Md. Illiyas filed I.A. No.4795 of 2020 before this Court in Cr. Appeal (SJ) No.444 of 2019 with a prayer for releasing him on provisional bail for three months and the said interlocutory application is still pending and has not yet been disposed of by this Court hence this Court has never rejected any application under Section 389 of Code of Criminal Procedure of the co-convict- Md. Ilyas Hussain @ Md. Illiyas. Perusal of the order dated 22.09.2020, passed in the said I.A. No.4795 of 2020 reveals that on that day the learned counsel for the said Md. Ilyas Hussain @ Md. Illiyas prayed for time to advance arguments as to why the principle of law 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** will not be applicable to the facts of that case and co-convict -Md. Ilyas Hussain @ Md Illiyas has not even filed any petition for suspension of sentence before this Court in his connected appeal

arising out of the same impugned judgment against which this appeal has also been preferred.

It is a settled principle of law that that where the accused is convicted for offence punishable under the Prevention of Corruption Act, 1988 it would not be prudent and desirable to give protection to the convict under Section 389 of "the Code of Criminal Procedure" as has been reiterated by the Hon'ble Supreme Court of India in the case of **Shiv Kumar v. 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 also pertinent to mention here that this Court can hear and dispose of this appeal on merits on any day which is suitable to the Applicant-Appellant. It is also relevant to mention here that this Court has heard and disposed of all such appeals under the roster heading 'P.C. Act Cases' in which the appellants were ready for final hearing of the appeals and even several appeals filed in the year 2020 including the appeal having voluminous documents, where the Lower Court Records in view of the voluminous documents were to be transported to this Court in big tin trunk have already been finally disposed of after the Covid-19 pandemic set in by virtual mode, hence this appeal can also be disposed of as and when the appellants get ready for hearing of these appeals. It is needless to mention here that there has not been many judgments of conviction involving the offences punishable under the penal provisions of the Prevention of Corruption Act, 1988, of the year 2021 in this state, because of the restrictions imposed by the administrative side of this court upon the trial courts restraining them from examining the witnesses because of the Covid-19 pandemic.

It is also a settled principle of law that for granting of post-conviction bail to a convict under Section 389 of Code of Criminal Procedure, there has to be strong and compelling reasons for grant of bail and such strong and compelling reason must be recorded in the order granting bail as has been observed by the Hon'ble Supreme Court of India in the case of **Preet Pal Singh v. State of U.P. and Anr.** reported in (2020) 8 SCC 645, paragraph no.35 of which reads as under:-

*“35. XXXXXXXXXXXX However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC.”(Emphasis supplied)*

So far as the contention of the learned senior counsel for the Applicant-Appellant regarding the granting of bail and suspension of execution of sentence of the Applicant-Appellant on the ground of undergoing half of the sentence is concerned, this Court is of the considered view that the Applicant-Appellant is not entitled to be released on bail and suspension of execution of the sentence on the ground of undergoing more than half of the sentence simpliciter because it is a settled principle of law that for releasing a convict on the ground of undergoing half of the sentence, the twin conditions must exist;

One is that there is no chance of the appeal of being taken up for hearing and final disposal in near future; and

The second condition is that the Applicant-Appellant has undergone half of the maximum sentence imposed.

It is needless to mention that the release of a convict on the ground of half of the sentence undergone is not based upon any statutory provision of law rather the same is based on the principle of violation of the fundamental rights of speedy trial as enshrined under Article 21 of the Constitution of India. In the

case of **Hussainara Khatton & Ors. Vs. Home Secretary, State of Bihar (1980 1 SCC 108)**, the Hon'ble Supreme Court of India recognized the right of speedy trial to be a fundamental right under Article 21 of the Constitution of India. In the case of **Akhtari Bi (Smt.) v. State of M.P.**, reported in **(2001) 4 SCC 355**, the Hon'ble Supreme Court of India has observed as under in paragraph no.5:-

*"5. To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. This Court has, time and again, reminded the executive of their obligation to appoint requisite number of Judges to cope with the ever-increasing pressure on the existing judicial apparatus. Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. It is unfortunate that even from the existing strength of the High Courts huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the Constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular Benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by*

*constituting regular and special Benches for that purpose.”(Emphasis supplied)*

It is pertinent to mention here that while enunciating this principle, the Hon’ble Supreme Court of India has very much in its mind the denial of fundamental right of speedy trial guaranteed under Article 21 of the Constitution of India to the appellant of that case and thus for the purpose of computing the period beyond which the convicts can be released on bail, the Hon’ble Supreme Court has held that if an appeal is not disposed of within the aforesaid period of five years for no fault of the convicts, such convicts may be released on bail on such condition as may be deemed fit and proper by the Court and the Hon’ble Supreme Court also went on to say that in computing the five years delay which is attributable to the convict or his counsel can be deducted. This in other words means that if the delay in disposal of the appeal is caused by the appellant or his counsel certainly that will not entitle the appellant for bail because of the pendency of the appeal for a long time. So from the aforesaid discussions it is crystal clear that if the convict is not cooperating with the hearing of the appeal, he cannot take the plea that merely because he has undergone half of the sentence, he has to be released on bail and if such a proposition is accepted it will lead to an absurd consequence whereby the sentence imposed by the trial court will automatically be reduced to half of what has been imposed, without the appeal being heard because of non-cooperation of the appellant.

This view of the Hon’ble Supreme Court is also reiterated in the Judgment of Hon’ble Supreme Court in the case of **Shiv Kumar vs. State (NCT of Delhi)** (*supra*) where in the case involving the offences punishable under penal provisions of Prevention of Corruption Act, 1988 the Apex Court did not release the appellant convict on bail and instead requested the High Court to conclude the trial. Similarly in the case of **Salim Javed vs. State of Rajasthan** reported in (2006) 9 SCC 602 where also before releasing the appellant on bail, the Apex Court has

taken into consideration the submissions made on behalf of the appellant that there was no chance of the concerned appeal to be heard in near future. Similarly, in the case of **Dinesh Kumar Sinha vs. State of Jharkhand through C.B.I.** reported in (2009) 6 SCC 628, the Hon'ble Supreme Court also considered that there is no possibility of early hearing of the appeal in the High Court and therefore, the bail was granted to the appellant of that case concerned. Principally basing upon this principle, the legislature introduced section 436A in the Code of Criminal Procedure, 1973 by way of Amendment in the year 2005 vide Section 36 of Act No.25 of 2005 with effect from 23.06.2006 of course which provision of law is only applicable to the stage of proceeding before final judgment is passed by the trial court, and explanation that section which reads as under

*Explanation.- In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.*

Also provides for excluding the delay in proceeding caused by the accused in computing the period of detention for granting bail in terms of the said provision of law. Thus as the appellant is not cooperating with the hearing of the appeal is not entitled to bail on this ground simpliciter.

Considering the aforesaid facts, this Court is of the considered view that as there is neither strong nor a compelling reasons to admit the Applicant-Appellant on bail more so, because of the submissions made by the learned counsel for C.B.I. that there is every chance of the Applicant-Appellant absconding if released on bail, this is not a fit case where the Applicant-Appellant be admitted to bail during the pendency of the appeal or to suspend the execution of the sentence of the Applicant-Appellant.

Accordingly, this interlocutory application being without any merit is rejected.

**(Anil Kumar Choudhary, J.)**

**Cr. Appeal (SJ) No. 284 of 2019**

List this appeal for hearing in due course or as and when mentioned by the appellant.

**(Anil Kumar Choudhary, J.)**

A.F.R. -Sonu-Gunjan/