



IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A. No. 833 of 2026

(Arising out of CRLA No. 200 of 2026)

Umesh Chandra Swain **Appellant**

-versus-

State of Odisha (Vigilance) **Respondent**

Advocates appeared in this case through hybrid mode:

For Appellant/Petitioner : Mr. Bhabani Samal, Advocate

For Respondent/Opp. Party: Mr. Sanjay Kumar Das,
Standing Counsel (Vigilance)

CORAM:

THE HON'BLE MISS JUSTICE SAVITRI RATHO

J U D G M E N T

Date of hearing and Judgment: 24.03.2026

Savitri Ratho, J. This interim application has been filed for stay of realization of fine till final disposal of the CRLA.

2. By judgment dated 26.12.2025 by the learned Special Judge (Vigilance), Bhubaneswar in TR Case No. 37 of 2010 arising out of Bhubaneswar Vigilance PS Case No. 32 of 2006, the appellant along with six others has been convicted for commission of offences punishable under Section 13(2) read with Section 13(1)(d) of the P.C. Act and under Section 420/468/471/120-B of the IPC and sentenced to undergo RI for 3 years and to pay fine of Rs.25,000/- and in default of payment of



fine to undergo RI for another 3 months on each count and all the sentences were directed to run concurrently. Another accused has been convicted for commission of offences under Section 420/468/471/120-B of the IPC and sentenced thereunder.

3. The Appellant has been convicted for illegal sanction and disbursement of the loan amount of Rs.52,95,000/- while serving as public servant for commission of offences punishable under Section 13(2) read with Section 13(1)(d) of the P.C. Act and Section 420/468/471/120-B of the IPC.

4. Mr. Bhabani Samal, learned Counsel for the Appellant submits the petitioner was joined as Recovery Assistant in ORHDC Ltd. on 25.05.1999 on contractual basis with consolidated salary of Rs.3,000/- per month but on 25.05.2005 he has been dismissed from his service. He further submits that the petitioner was not able to get any other service due to his age and is now temporarily working in a private job and earning approximately Rupees seven to eight thousand per month. His wife is suffering from high blood pressure and diabetes and he has two unmarried daughters. He is finding it difficult to maintain his family with this income. He is therefore not in a position to deposit the fine amount imposed and shall suffer irreparable loss and injury unless the realization of fine amount is stayed by this Court.

5. Mr. Sanjay Kumar Das, learned Standing Counsel for the Respondent -Vigilance submits that the financial condition of the petitioner is sound and he is physically fit for which, he is



capable of depositing the fine imposed by the learned Trial Court. In the event, the appellant succeeds in the Appeal, he will get back the entire amount deposited by him. He also submits that Section 64 of the Indian Penal Code, corresponds to Section 4 and 8 (2) of the Bhartiya Nyaya Sanhita, 2023 which relates to the offender being sentenced to fine. He has submitted that the Supreme Court has held that the Appellate Court can impose conditions while suspending the sentence especially the sentence of fine. And whether the sentence of fine should be conditional or unconditional, depends on the facts of each case, especially the nature of the offence. He relies on the decisions of the Supreme Court in case of ***Satyendra Kumar Mehra alias Satendera Kumar Mehra vs. State of Jharkhand ; (2018) 15 SCC 139*** and ***Central Bureau of Investigation vs. Ashok Sirpal ; 2024 INSC 819***.

6. More often than not, this Court while admitting Appeals, where the Appellant has been granted bail during trial and has not misused the liberty granted to him / her, suspends the sentence and directs for his / her release on bail and also stays realization of the fine amount during pendency of the Appeal.

I have also passed a number of such orders.

7. But after I was assigned the roster of hearing Criminal Appeals and Revisions relating to Vigilance and the CBI, I found that in a number of old appeals and revisions which come up for hearing after more than ten years (some after twenty years or more), either the learned counsel do not appear



or if they appear they submit that they cannot argue the case as they do not have any instructions from the Appellant / Petitioner. In some cases, where the conducting counsel has expired or has been designated as a Senior neither does he appear nor do his associates appear inspite of having signed the vaklatnama for which the Court is compelled to issue notice to the Appellant. In many of these cases notice returns unserved with the endorsement – “addressee not found” or “addressee left”

8. As a result, these old Appeals and revisions cannot be taken up for hearing, till the Vigilance or CBI counsel obtains instructions about the wellbeing of the Appellant / Petitioner and intimates him / her or their family members that the case is listed for hearing. Where the appellant or petitioner is traceable, the case is taken up for hearing after appearance of a counsel or appointment of a counsel by the Court and occasionally, in case of Criminal Revisions by perusing the materials on record. In old cases, quite often, the Vigilance and CBI authorities are also unable to contact the Appellant / Petitioner as they have either expired / have changed their address, which their original neighbours are not aware of, or the address is incomplete.

9. This Court can however not lose sight of the fact that in many cases where the fine amount is high an Appellant may not be in a position to deposit the entire fine amount on account of his / her age, health condition or financial difficulty.

10. In case of default of payment of the fine, as custodial sentence is usually imposed, the Appellant will be remanded to



custody in case of failure to deposit the fine amount. This would render the Criminal Appeal infructuous as chance of the Appeal being heard and disposed of within a short interval is bleak due to pendency of older Appeals.

11. In the case of **Satyendra Kumar Meher** (supra), the Supreme Court has held as follows;

“We, however, make it clear that the appellate court while exercising power under Section 389 CrPC can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the appellate court while exercising jurisdiction under Section 389 CrPC. The appellate court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine.”

In the case of **Ashok Sirpal** (supra), the Supreme Court has held as follows;

“8. While suspending the sentence, especially the sentence of fine, the Appellate Court can impose conditions. Whether the order of suspension of the sentence of fine should be conditional or unconditional depends on the facts of each case and especially the nature of the offence. For example, when there is a sentence of fine imposed while convicting an accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881. depending upon the facts of the case, the Appellate Court may impose a condition of depositing the fine amount or part thereof while suspending the sentence. However, the approach of the Court may be different in case of offences punishable under the IPC and cognate legislations. Whenever a prayer is for suspension of the sentence of



fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions. However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it. Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Article 21 of the Constitution.

9. In the facts of the case, the total sentence, including substantive sentence and sentence in default of fine, will be imprisonment for eight years and nine months. Considering the huge pendency of criminal appeals triable by a Single Judge and considering the limited period sentence, it is not possible to find fault with the impugned order passed way back on 29th September 2016.

10. Hence, there is no reason to interfere with the impugned order, especially when the respondent has deposited a sum of Rs.15.00.000/- in this Court. The deposit of Rs. 15.00.000/- shall be treated as a condition for suspending the sentence of fine. Accordingly, the appeal is disposed of with the above modification. The amount of Rs. 15,00,000/- deposited by the respondent has been invested by the Registry in fixed deposit. Immediately after maturity of the existing fixed deposit. the Registry shall transfer the amount of Rs. 15,00,000/-with interest accrued thereon to the Delhi High Court. The High Court shall invest the said amount in an appropriate fixed deposit with any nationalised bank till the disposal of the criminal appeal. Order regarding disbursal/withdrawal of the amount and interest accrued thereon shall be passed at the time of final disposal of the appeal.”



12. The Appellant has been convicted for his complicity in illegal sanction and disbursement of a loan of Rs.52,95,000/-.

13. In view of the above discussion, in order to ensure that Appellant and his counsel retain some interest in the Appeal when it is taken up for hearing it is directed that if the Appellant deposits an amount of Rs. 20,000/- out of the total fine amount within a period of four weeks from today before the learned trial Court, the realization of the balance amount of the fine shall remain stayed during pendency of this appeal. This deposit shall be subject to the final result of this appeal. It is further directed that this amount shall be kept in fixed deposit in a Nationalized Bank in order to earn interest.

14. It is however made clear that in case of default in appearance by the counsel for the Appellant or the Appellant in the Appeal, this order is liable to be recalled.

15. The I.A. is disposed of with the aforesaid directions.

(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated, the 24th day of March, 2026/Sukanta