



2024:DHC:9469



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 09th December, 2024**

+ CRL.A. 852/2024

B.P. SINGH (THROUGH PAIROKAR)

.....Appellant

Through: Mr. Siddharth Satija, Ms. Sowjhanya Shankaran, Mr. Akash Sachan, Ms. Arunima Nair and Ms. Anuka Bachawat, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan Siddhant, GP and Mr. Rohit Kumar and Mr. Abhay Singh, Advocates.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**J U D G M E N T****ANUP JAIRAM BHAMBHANI J.****CRL.M.(BAIL) 1519/2024 (seeking suspension of sentence)**

By way of the present application filed under section 430 read with section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the appellant seeks suspension of sentence awarded to him *vide* order dated 07.09.2024 made by learned Special Judge (PC Act) CBI-21, RACC/New Delhi in case bearing CBI No.27/2019 arising from RC No.2017-A-0004, during pendency of the appeal.

2. *Vide* judgment of conviction and order on sentence, both dated 07.09.2024, the appellant has been sentenced to 04 years of rigorous



imprisonment for commission of the offence under section 120-B read with section 420 of the Indian Penal Code, 1860 ('IPC') and section 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act') alongwith fine of Rs.75,000/-, with a default sentence of 03 months simple imprisonment. In addition, the appellant has also been sentenced to 04 years of rigorous imprisonment for the offence under section 420 IPC alongwith fine of Rs.75,000/-, with a default sentence of 03 months simple imprisonment.

3. Notice on this application was issued on 10.09.2024.
4. Status Report dated 14.10.2024 has been filed on behalf of the respondent/Central Bureau of Investigation ('CBI').
5. Nominal Roll dated 23.09.2024 has also been received from the concerned Jail Superintendent.
6. The court has heard Mr. Siddharth Satija, learned counsel appearing for the appellant and Mr. Anurag Ahluwalia, learned CGSC on behalf of the CBI at length on this application on 15.10.2024 and 23.10.2024.
7. Mr. Satija and Mr. Ahluwalia have also handed-up brief notes of their respective submissions, which are taken on record.
8. The genesis of the dispute is a credit facility availed by one Sudhir Kumar Arora ('borrower') in his capacity as proprietor of M/s Supreme Steels from what was then Corporation Bank (now Union Bank of India) ('bank') under the Corp. Vyapar Overdraft Scheme ('CVPOD Scheme'), which was based on collateral offered in the form of an immovable property bearing Khasra No. 476 & 477 situate in Village Bhonja, District Ghaziabad, Uttar Pradesh ('subject property').



9. The appellant is a property-valuer and it is *inter-alia* the CBI's case, that the appellant prepared and submitted a valuation report dated 'nil' assessing the value of the subject property offered as collateral at an exaggerated sum of Rs.4,82,63,250/-; and that on the basis of such valuation submitted by the appellant, the bank disbursed a loan of Rs.3.10 crores to the borrower. The CBI alleges that the subject property was overvalued only to avail a credit facility of Rs.3.10 crores; and that the valuation report submitted by the appellant also falsely stated that the borrower Sudhir Kumar Arora was the exclusive owner of the subject property.
10. Mr. Satija submits that the principal allegation against the appellant is that by his undated valuation report, the appellant had over-valued the subject property at Rs.4,82,63,250/-, which it is argued, is a completely misconceived allegation. It is argued that in order to 'prove' that allegation, the CBI has cited a valuation report dated 03.04.2014 prepared by one Amarjeet Singh (PW-4), who is also stated to be a property-valuer, who had valued the subject property at Rs.1.45 crores; and furthermore, the CBI has also cited another property-valuer, one Ashutosh Nirmal (PW-3), who it is claimed, has valued the subject property at Rs.1,32,43,000/- in his report dated 30.10.2014. Furthermore, it has been submitted that the CBI have also claimed that the value of the subject property was mentioned at Rs.92,76,529/- at the time of registration of Partition Deed dated 15.01.2013; and moreover, it has been alleged, that the subject property was ultimately auctioned for only Rs.1.27 crores in 2024, *i.e.*, at only about 26% of the valuation of the property given by the appellant.



11. It is submitted that a valuer is an ‘expert’ within the meaning of section 45 of the Indian Evidence Act, 1872; and valuation of property is a complex exercise; and by its very nature, it is time sensitive. Mr. Satija argues that it cannot be said that the valuation made by a particular property-valuer is ‘false’ by comparing it with the valuation made by another property-valuer, especially if the valuations being compared have been made in different years. Mr. Satija has argued that the value of a property not only varies with time, it is also affected by factors such as the time when the property was auctioned, the fact that the borrower’s loan account had been declared a Non-Performing Asset, all of which would have had a negative impact on the value of the property.
12. Counsel points-out that a reading of the cross-examination of the Investigating Officer (I.O.) (PW-29) conducted on 03.04.2024 on behalf of the appellant, would show that no independent investigation was done by the I.O. in relation to the so-called correct valuation of the subject property. In this regard, Mr Satija has drawn attention to the following portion of the cross examination of the I.O. conducted on 03.04.2024:

“I did not investigate circumstances or factors or events that potentially may have had influence on the valuation of mortgaged property in the year 2012 and 2014.

* * * * *

I do not remember which method Amarjit Singh or Ashutosh Nirmal applied for the purposes of conducting valuation.

Que: Is it correct that you did not find any circular which mandated that a written request is to be sent to an empaneled valuer for him to conduct valuation?

Ans: I do not remember.

* * * * *



It is correct that both the valuers appointed by the bank pursuant to account turning NPA provided market value of the mortgaged property in their reports.

It is correct that Amarjit Singh did not mention circle rate of the mortgaged property in his valuation report. During the course of my investigation, I did not seize any document to show the circle rate of mortgaged property. It is correct that B.P. Singh mentioned the circle rate in his valuation report. It is further correct that I did not find any material to show that the circle rate provided by B.P. Singh in his valuation report was wrong. (Vol. I rely on the reports of Amarjit Singh and Ashutosh Nirmal as well as Partition Deed). It is correct that Amarjit Singh and Ashutosh Nirmal did not provide me with the details of property dealers or other third parties from whom they had gathered information regarding market value.

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... .. It is correct that I did not verify the reasoning of the valuation report provided by Amarjit Singh and Ashutosh Nirmal. It is correct that the partition deed only provides the circle rate of the mortgaged property and not its market value... ..

(emphasis supplied)

13. Furthermore, Mr. Satija has also drawn attention to the cross-examination of the subsequent I.O. (PW-30) conducted on 07.05.2024, to show that no evidence was found to the effect that the valuation report prepared by the appellant was not objective. The relevant portion of the cross-examination of PW-30 conducted on 07.05.2024 reads as under :

“During the course of my investigation, I did not conduct any investigation with regard to different methods through which valuation of IP could be conducted. I am not aware of various methods of valuation of IP i.e., Land and Building method, Sales Comparison method, Rent Capitalisation method etc. I did not conduct any investigation with regard to circumstances or factors or events that may have had an effect or influence on the valuation of IP. I cannot say if macro-economic factors like inflation, fiscal laws, Rent Ceiling Legislation have an influence on valuation of IP. I cannot say if the valuation of property would change with the purpose for which it is being valued.



I do not remember which method of valuation did Amarjit Singh and Ashutosh Nirmal apply for the purpose of conducting valuation of mortgaged IP.

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... .. It is correct that Valuation Report of B.P Singh also contained circle rate of mortgaged IP. It is correct that I did not find any evidence to show that circle rate provided by B.P. Singh was wrongly mentioned.

* * * * *

I did not seize any Sale Deed of the Year 2012 or 2014 with regard to Patel Marg, Ghaziabad, where the mortgaged IP is situated. I did not verify the reasoning of Valuation Report of Sh. Amarjit Singh or Sh. Ashutosh Nirmal from any independent source. It is correct that I did not conduct any independent investigation with regard to Valuation of mortgaged IP. It is correct that I did not compare the market rates of the Year 2012 with the Year 2014. I did consider the possibility of the market rates may have gone higher or lower from Year 2012 to Year 2014.

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... .. It is correct that I had no basis to believe that the report provided by B.P. Singh was not objective. It is correct that I had no basis to believe that Reports provided by Ashutosh Nirmal and Amarjit Singh was objective.

(emphasis supplied)

14. On the other hand, Mr. Ahluwalia appearing for the CBI has opposed the prayer for suspension of sentence, submitting that the appellant has not only exaggerated the value of the subject property, but he was also not even an 'approved valuer'; and in fact *via* e-mail dated 04.03.2013 sent by Mr. Girish Sharma, Director of M/s. S&G Advisory Services Pvt. Ltd., which was the agency advising Corporation Bank, the bank was cautioned against the illegal activities of the appellant.
15. Learned CGSC has also drawn attention to a subsequent letter dated 05.03.2013, again sent by Mr. Girish Sharma, Director of M/s. S&G Advisory Services Pvt. Ltd. to the DGM of Corporation Bank, whereby Mr. Sharma had pointed-out that he had earlier informed co-accused Pavan Arya, who was one of the bank officials, that the valuation



report in respect of the subject property had not been issued by M/s. S&G Advisory Services Pvt. Ltd. but only by the appellant, who was their employee.

16. It is also the contention of the CBI that the valuation report prepared by the appellant incorrectly noted that Sudhir Kumar Arora was the owner of the subject property; whereas, it came on record that Sudhir Kumar Arora became the legal, exclusive owner of the subject property *only on 05.01.2013* when the partition deed was registered in his name. It is therefore submitted, that Sudhir Kumar Arora was not the lawful, exclusive owner of the subject property *on 24.12.2012* when the appellant submitted his report, and therefore the appellant had falsely described Sudhir Kumar Arora as the owner of the said subject property as of that date.
17. In rejoinder, Mr. Satija submits, that it may be noted for the record that both e-mail dated 04.03.2013 and letter dated 05.03.2013 referred-to above, had neither been 'exhibited' nor put to the appellant in his statement recorded under section 313 of the Code of Criminal Procedure 1973. Counsel submits that furthermore, the within-named Mr. Girish Sharma, who is stated to be the author of the said two communications, was not even arraigned as a prosecution witness during the course of trial; nor was any other person from the said company namely, M/s. S&G Advisory Services Pvt. Ltd., examined during the course of the trial to prove the said two communications.
18. Mr. Satija has also pointed-out, that insofar as the contention that the valuation report prepared by the appellant falsely noted that Sudhir Kumar Arora was the owner of the subject property is concerned, it is



the appellant's case that it is not the job of a valuer to verify legal ownership of a subject property; and the onus of verification of legal ownership can never be put on a property-valuer.

19. Mr. Satija has further pointed-out that even otherwise, the sentence awarded to the co-convict Mr. Sudhir Kumar Arora who was the borrower has already been suspended during the pendency of the appeal *vide* order dated 30.09.2024 made by this Bench in CRL.A. No.867/2024. Counsel seeks grant of similar relief to the appellant on grounds of parity.
20. Though much has been argued on behalf of the parties, upon an overall conspectus of the facts and circumstances of the case, and based on the record, what is clear is that the mainstay of the CBI case against the appellant was that he had overvalued the subject property in his valuation report submitted to the bank; and the learned trial court has returned a finding against the appellant on that aspect. However, what is also seen from the record is that in the course of his cross-examination, the I.O. has admitted that *he had not conducted any independent investigation* whatsoever to conclude that the property had been overvalued by the appellant; and in fact the I.O. has said in his cross-examination that he had *no basis to believe that the valuation report prepared by the appellant was not objective*. It is also evident that the learned trial court has accepted the CBI's contention that *merely because* two other property-valuers have ascribed different values to the subject property, in a year different from the year in which the appellant had valued the property, that is sufficient to prove that the appellant had overvalued the property. Therefore, the opinion



of an expert as to the fair value of the subject property has been sought to be disproved by the opinions of two other experts in relation to the same property, without any independent investigation having been conducted into what might have been the true value of that property.

21. Suffice it to say at this stage, that the aforesaid aspects require deeper consideration in appeal.
22. It also bears mentioning that the sentence awarded to co-convict Sudhir Kumar Arora has already been suspended during the pendency of the appeal *vide* order dated 30.09.2024 passed by this Bench in CRL.A. No.867/2024, on the ground that certain critical aspects which formed the basis of conviction by the learned trial court appear to be incorrect on point of fact, since they are not borne-out by the record.
23. In the circumstances, this court is persuaded to *suspend the sentence* of the appellant – **Birender Prasad Singh @Virender Prasad Singh s/o Sh. Ram Dass Singh** – *pending disposal of the present appeal*, subject to the following conditions :
 - 23.1. The appellant shall deposit Rs.1,50,000/- (Rs. One Lac Fifty Thousand Only) being the aggregate amount of the fine imposed by the learned trial court in the sentencing order, if not already paid, with the Registrar General of this court within a period of 06 weeks;
 - 23.2. The appellant shall furnish a personal bond in the sum of Rs. 5,00,000/- (Rs. Five Lacs Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;



- 23.3. The appellant shall furnish to the Investigating Officer, CBI a cellphone number on which the appellant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 23.4. The appellant shall *ordinarily* reside at the address as per prison records and shall promptly inform the Investigating Officer in writing if there is any change in that address;
- 23.5. If the appellant has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without the prior permission of this court; and
- 23.6. The appellant shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending appeal.
24. Nothing in this order shall be construed as an expression of opinion on the merits of the pending appeal.
25. A copy of this order be sent to the concerned Jail Superintendent *forthwith* for information and compliance.
26. The present application stands disposed-of.
- CRL.M.(BAIL) 1599/2024 (seeking interim suspension of sentence)**
27. In view of the order passed-above, the present application stands disposed-of as infructuous.
- CRL.A. 852/2024**
28. The appeal already stands admitted *vide* order dated 10.09.2024.
29. List on the Regular Board, to be taken-up at its turn.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 09, 2024/HJ