

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.2858 OF 2024
(@ Out of SLP(CrI.) No.10302/2023)**

NIKHIL

Appellant(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

ORDER

1. Leave granted.
2. This appeal is against the judgment and order of the High Court of Judicature at Bombay at Nagpur in Criminal Application (APL) No.570/2023 dated 02-05-2023 by which the High Court granted suspension of sentence by imposing a condition of depositing 50% of the compensation of Rs.2,86,00,125/-, which amounts to Rs.1.43 crores.
3. The appellant was convicted by the Trial Court and apart from a sentence of four years six months rigorous imprisonment under Sections 409 and 201 IPC, he was also directed to pay an amount of Rs.2.86 crores. Against the conviction and imposition of compensation, the appellant filed a criminal appeal and sought suspension of sentence, which was rejected by an order dated 03.04.2023.

4. Challenging the above said order passed by the Criminal Appellate Court, the appellant approached the High Court by way of a criminal application in which the High Court passed the following Order:

"17..... His right of appeal would get frustrated, if he is not released on bail by suspending the sentence during pendency of the appeal. In my view, therefore, in the facts and circumstances, the case in question is a fit case to suspend the sentence and release the accused on bail, albeit, subject to appropriate condition with regard to payment of compensation.

18. The accused has misappropriated the amount of the customers/depositors of the bank. The offence has been proved against the accused. The amount of compensation is Rs.2,86,00,125/-. By applying any standard, it must be held that the gravity and enormity of the misappropriation is quite serious. The genuine and innocent customers of the bank have been duped and denied the benefit of their money. The accused is under an obligation to pay the compensation. Even if he undergoes the default sentence, he cannot be exonerated from paying the compensation. It is to be noted that at this stage the submission advanced on behalf of the accused that he has chance to succeed in appeal, cannot be made basis for not directing the accused to deposit the compensation. In my view, considering the facts and circumstances, the interest of justice would be met if the accused is directed to deposit 50% of the amount of compensation as a condition for suspension of sentence. With this, I pass the following order

19. The application is allowed.

i] The order dated 03.04.2023 passed by the learned Additional Session Judge, Chandrapur in Criminal Revision No.09/2023, is set aside.

ii] The application (Exh.5) for suspension of

substantive sentence is allowed, subject to a condition that the applicant shall furnish solvent surety in the sum of Rs. 1,00,000/-.

iii] The applicant/accused shall also deposit 50% of the compensation awarded by the impugned order, being a condition for suspension of sentence and his release on bail.

iv] Liberty is granted to the accused/applicant to apply before the learned Additional Sessions Judge for expeditious disposal of the appeal. It is made clear that if such an application is made by the accused, it shall be allowed and the appeal be disposed of within six months from the date of application.

20. With these directions, the application stands disposed of."

5. While admitting the appeal, this Court by order dated 06.09.2023 suspended the direction to deposit 50% of the compensation awarded.

6. We have heard Mr. Ishaan George, learned counsel for the appellant accused and Mr. Shrirang Varma, learned counsel for the State. Having considered the matter in detail, we are of the opinion that taking into account the purpose and object of Section 357, read with its enunciation in *Dilip S. Dahanukar vs. Mahindra Co. Ltd.* [2007 (6) SCC 528], the direction of the High Court granting suspension of sentence subject to the condition of depositing 50% of compensation is not justified.

7. In view of the above, we allow the appeal arising out of Special Leave Petition (Crl.) No. 10302 of 2023 filed against the Criminal Application [APL] No. 570 of 2023 dated 02.05.2023 and set aside the direction to deposit 50% compensation amount

awarded by the Additional Sessions Judge.

.J.
[PAMIDIGHANTAM SRI NARASIMHA]

.J.
[PANKAJ MITHAL]

New Delhi
July 11, 2024.

ITEM NO.45

COURT NO.15

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10302/2023

(Arising out of impugned final judgment and order dated 02-05-2023 in CRLA(APL) No. 570/2023 passed by the High Court Of Judicature At Bombay At Nagpur)

NIKHIL

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(IA No. 166324/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 11-07-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Shreeyash Uday Lalit, Adv.
Mr. Ishaan George, AOR
Ms. Runjhun Garg, Adv.
Mr. Himanshu Vats, Adv.
Mr. Angad Pahel, Adv.

For Respondent(s) Mr. Shrirang B. Varma, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Ms. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.
Ms. Preet S. Phanse, Adv.
Mr. Adarsh Dubey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed in terms of the signed order.
3. Pending applications, if any, also stand disposed of.

(INDU MARWAH)
AR-cum-PS

(NIDHI WASON)
COURT MASTER (NSH)

(Corrected signed order is placed on the file)