SINGLE BENCH **Dasti** **Bail**

IN THE HIGH COURT OF DELHI AT NEW DELHI

Copy of order

No 27527 /Crl. Dated 03/8/22

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1. Sh. Vikas Dhull, Ld. Special Judge, (PC Act): CBI-23, R.A.C.C., New Delhi
   /Or Successor court.
2. The Superintendent, Central Jail , Tihar, New Delhi.
3. The Dupty Director,
   Bureau of Immigration, East Block-8,
   level-5, R.K. Puram.

CRL.A. NO. 297/2022 & Cr.M.B. No 815/22

Om Prakash Chautala Petitioner/Appellant

Versus

Central Bureau of Investigation Respondent

Appeal filed under Section 374(2) Cr. P.C. against the impugned order dated 21/05/2022 & 27/05/2022 passed Sh. Vikas Dhull, Ld. Special Judge, (PC Act): CBI-23, R.A.C.C., New Delhi in CC No. 57/2019, Case RC No. 2(A)/2006/CBI/ACU-VII, U/s. 13(1)(e) r/w 13(2) of PC Act, 1988 Branch: CBI, ACU-VII/ New Delhi.

Sir,

I am directed to forward herewith for immediate compliance/necessary action a copy of order dated 01/08/2022 passed in the above case by Hon'ble Mr. Justice Yogesh Khanna, of this Court.

The Hon'ble Court has ordered that the sentence of the appellant/Applicant is suspended till the pendency of the present appeal, subject to payment of fine of Rs.50.00 Lacs as imposed by the learned Trial Court and also on his executing a personal bond of 5.00 Lacs with one surety of like amount to the satisfaction of the learned Trial Court.

Other necessary directions are contained in the enclosed copy of order.

Yours faithfully

3/8/2022

Deputy Registrar
for Registrar General

Encl: Copy of order dated 01/08/2022
and memo of parties.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.A. 297/2022, CRL.M.A.Nos.12723/2022, 14312/2022

OM PRAKASH CHAUTALA ..... Appellant

Through: Mr.N.Hariharan, Mr.Sunil Dalal, Senior Advocates with Mr.Amit Sahni, Ms.Sonali Tiwary, Ms.Monica, Ms.Manisha Saroha, Ms.Pratibha Varun, Mr.Gunraj Bakshi, Mr.Parth Sharma, Mr.Varun Deswal, Mr.Vaibhav Sharma, Mr.Siddharth S.Yadav, Ms.Punya Rekha Angara, Mr.Prateek Bhalla, Mr.Rahul Sambher, Mr.Jayant, Mr.Harsh K.Sharma, Ms.Vaibhavi Sharma, Mr.Lakshay, Mr.Bhumika Yadav, Mr.Rishabh Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr.Anupam S.Sharrma, SPP with Mr.Prakash Airan, Ms.Harpreet Kalsi, Mr.Anurag Andley, Advocates.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 01.08.2022

CRL.M.(BAIL) 815/2022 & CRL.M.A.12722/2022

1. This is an application filed by the applicant/appellant seeking suspension of sentence. It is argued by the learned senior counsel, the appellant is 88 years of age and is suffering from post-polio disability.

2. The appellant/applicant was first convicted in CC No.*37/2010* arising out of RC No.*3(A)/04/ACU-IX/DELHI* on 16.01.2013 and was sentenced to ten years of RI vide order dated 22.01.2013. During the period of incarceration in the aforesaid case, the production warrants were issued to

the convict in other pending matter viz. CC No. *57/2019* arising out of RC No.*02(A)/2006/ACU-VII* New Delhi and it is alleged he has already undergone four years incarceration imposed by the Court in the present case.

3. It is the case of the appellant that during the sentence in CC No.*37/2010*, the appellant has also undergone the sentence awarded i.e., four years in the present case. A representation dated 01.06.2022 was filed by the appellant through his counsel to calculate actual physical custody of the appellant, lodged in Jail No.2, Tihar, New Delhi and release the applicant, since the appellant has already undergone the actual physical incarceration awarded by the Court. The Jail Authority though calculated the actual physical custody of the appellant herein as five years, six months and fourteen days as on 01.07.2022 but instead of releasing the appellant, the Jail Authority wrote a letter to the Special Judge, CBI apprising him actual physical incarceration of the applicant and the learned Special Judge, CBI observed the benefit of Section *428* Cr.P.C. would be given only in terms of order on sentence dated 27.05.2022.

4. It is argued the appellant herein is entitled to benefit under Section *428* Cr.P.C. for the entire period as he was in custody in the earlier case i.e., CC No.*37/2019* arising out of *RC No.3(A)* (supra).

5. It is submitted the Jail Authorities *admitted* in annexure *P6* viz. additional documents filed vide application dated 19.07.2022 the actual physical incarceration of the appellant in CC No.*37/2019*, but benefit under Section *428* Cr.P.C. was not given.

6. Today it is only an application for suspension of sentence, listed before this Court. Admittedly, as per the nominal roll dated 21.07.2022, the total period of the custody of the appellant is one year, five months and

twenty one days as on 21.07.2022. The appellant though was granted bail in the present case and he furnished the bail bonds but yet he remained in custody and was never released from jail because of sentence awarded in RC No.*3(A)* (supra).

7. Thus, considering the age of the appellant being *88* years and that in any case, admittedly, he has spent about one year and six months in custody as *per* nominal roll dated 21.07.2022 and further that in any case he remained in custody even after his bail bonds were accepted in the present matter; thus as the appeal may take some time to come on board for hearing, hence keeping the question of benefit under Section *428* Cr.P.C. to be decided along with the appeal, the sentence of the appellant/applicant is suspended till the pendency of the present appeal, subject to payment of fine of Rs.50.00 Lacs as imposed by the learned Trial Court and also on his executing a personal bond of Rs.5.00 Lacs with one surety of like amount to the satisfaction of the learned Trial Court. The appellant shall not visit abroad except with the permission of the learned Trial Court. A copy of payment receipt of fine shall be filed before the learned Trial Court at the time of furnishing the bail bond(s).

8. The application(s) stands disposed of in terms of above.

9. A copy of this order be communicated to the Jail Authorities/Trial Court for information and compliance.

10. Order *dasti*.

YOGESH KHANNA, J.

AUGUST 01, 2022
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THE SEAL OF DELHI HIGH COURT
सत्यमेव जयते
NEW DELHI

True Copy