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

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Judgment reserved on: 15.12.2025

Judgment delivered on: 07.01.2026

+ **CRL.A. 1434/2025**

SUMEET SURI

.....Appellant

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Chander M. Lall, Sr. Adv. with Mr.H.S. Bhullar, Ms. Ekta Chandani, Mr.Sarthak Aggarwal, Ms. Sarabjeet Kaur, Ms.Punya Rekha Angara, Mr. Aman Akhtar, Ms. Vasundhara Raj Tyagi, Mr. Arjan Singh Mandla, Ms. Gauri Ramachandran, Ms. Yashi Gupta, Mr.Fateh Singh Bhullar and Ms. Annanya Mehan, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for State with SI Amit Tyagi PS EOW and SI Bijender ASI Hardesh Kumar PS Alipur.
Mr. K.K. Manan, Sr. Adv. with Mr. Gaurav M. Liberhan, Mr. Sumant Vyas, Ms. Udit Bali, Mr. Karmanya Singh Chaudhary, Mr. Lavish Chandra, Ms. Yakshi Kataria, Ms. Shivani Varun, Ms. Adriti Gupta and Mr. Arun Singh Rawat, Advs. for complainants.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN



JUDGMENT

VIKAS MAHAJAN, J

CRL.M.(BAIL) 2099/2025

1. The captioned appeal has been preferred by the appellant seeking to impugn the judgment of conviction dated 25.09.2025 passed by the learned Special Judge (PC Act), in **SC No. 02/2022**, whereby the appellant was held guilty of the charge under Section 409 IPC and acquitted of charges under Sections 420, 468 and 471 IPC.

2. The present application under Section 430 BNSS (erstwhile Section 389 CrPC) seeks to suspend the order on sentence dated 09.10.2025 whereby the appellant was sentenced to undergo rigorous imprisonment for a period of 4 years and was further directed to pay a fine of Rs. 5,00,000/- of which Rs. 1,00,000/- was payable to the State and Rs. 4,00,000/- was directed to be paid as compensation to the complainant under Section 357A Cr.P.C and in default of payment of fine, to undergo simple imprisonment for six months.

3. The case of the prosecution in brief, as culled from the record, is that in early 2005 Mr. Aniljeet Singh (hereinafter “complainant”) and Mr. Sumeet Suri (hereinafter “appellant”) were running separate business firms namely, M/s Fashion Wears and M/s Anjanee Clothing Private Limited (hereinafter “ACPL”), respectively. Consequently, on 01.04.2005 the complainant and the appellant joined hands to form another company namely, M/s Ivory Clothing Private Limited (hereinafter “ICPL”).

4. In November 2006, the complainant’s father fell ill and subsequently died, in the year 2008. During this period the appellant was looking after day to day affairs of ICPL. After his father's death, the complainant began



managing ICPL's business and discovered large unpaid dues to unknown creditors and advances to several debtors. The appellant, with the help of his employee Chander Mohan and through his own company ACPL, illegally transferred substantial funds disguised as personal withdrawals and company transfers. When confronted, the appellant offered to settle the matter through an MoU dated 29.08.2008, agreeing to pay Rs.1.30 crore and resign from ICPL.

5. The appellant entered into the aforesaid MoU with mala fide intentions so that his fraud remained undetected. The complainant without comprehending the systemic fraud committed by the appellant, signed the aforesaid MoU and settled the matter therein. However, the complainant hired auditors to look up the books of account of ICPL and received a bolt from the blue with regard to systemic fraud committed by the appellant to siphon off funds to the tune of approximately Rs. 3 crores from ICPL.

6. The charge-sheet was filed on 22.01.2014, followed by four supplementary charge-sheets (2014-2021). Charges under sections 409/420/468/471 IPC were framed against the appellant.

7. To prove its case, the prosecution examined 25 witnesses and after considering the evidences, the learned Special Judge convicted the appellant for dishonestly misappropriating company funds of ICPL to the tune of Rs. 3 crores, thereby constituting criminal breach of trust under section 409 IPC. However, the appellant was acquitted of the charge under sections 420, 468 and 471 IPC.

8. Feeling aggrieved by the impugned judgment of conviction and order on sentence, the captioned appeal has been preferred by the appellant.

9. It is the case of the appellant and so contended by the Mr. N



Hariharan, learned Senior Counsel appearing on behalf of the appellant, that the impugned conviction under section 409 IPC is inherently inconsistent and contradictory to acquittal under sections 420/468/471 IPC.

10. He submits that the entire case of the prosecution is predicated upon the allegations of forgery, fake bills, cheating and dishonest inducement and all these allegations were rejected by the learned Trial Court in its impugned judgment dated 25.09.2025. Therefore, once these allegations fail, the charge of criminal breach of trust under section 409 IPC, which is substantially imitative and grounded fundamentally in these allegations, cannot survive.

11. To buttress his contention, he further submits that Clause (c) of the MoU dated 29.08.2008 has been erroneously construed by the learned Trial Judge in the impugned judgment as an admission of guilt. He also emphasizes the undisputed fact that the MoU dated 29.08.2008 has never been challenged by the complainant at any stage of the proceedings.

12. Insofar as the issue of validity of the C&F Agreement is concerned, Mr. Hariharan contends that the C&F Agreement was a valid legal document and fully recorded in audited accounts, as opposed to the contentions of the prosecution that such an agreement was also forged and misused by the appellant.

13. *Per contra*, Mr. K.K Manan, learned Senior Counsel appearing on behalf of the complainant submits that the appellant, during his tenure as Director of ICPL, abused his position of trust and dishonestly misappropriated funds, siphoning off a substantial amount of approximately Rs. 3 crores from ICPL.

14. He submits that although the charges framed in this case were under



Sections 409/420/468/471 IPC, the learned Trial Court acquitted the appellant herein of the offences under Sections 420/468/471 IPC after trial. The acquittal resulted from an improper investigation conducted by the investigation agency, due to which crucial aspects of the prosecution's case concerning document forgery could not be established. He contends that the complainant will be preferring an appeal against the acquittal of the appellant/applicant from the charges under Sections 420/468/471 IPC.

15. In respect of the argument raised by the appellant as to the finality of the settlement between the appellant and the complainant *vide* MoU dated 29.08.2008, Mr. Manan submits that the aforesaid MoU does not pertain to the misappropriated amount which came to light later after an audit.

16. I have heard learned Senior Counsels for the parties and have perused the record with their assistance.

17. The appellant/applicant has been convicted under Section 409 IPC and has been sentenced to undergo rigorous imprisonment for a period of four years. Thus, the sentence awarded is for a fixed term.

18. The Hon'ble Supreme Court in ***Bhagwan Rama Shinde Gosai and Others v. State of Gujarat, (1999) 4 SCC 421*** held that when a convict is awarded a sentence for a fixed period and he avails his statutory right to appeal, the Appellate Court should consider suspension of sentence liberally unless there are exceptional circumstances.

19. Likewise, in a recent decision, the Hon'ble Supreme Court in ***Aasif alias Pasha v. State of U.P. and Others, 2025 SCC OnLine SC 1644*** made following pertinent observations with regard to the suspension of sentence which is for a limited duration:

“15. *But if for any reason the sentence of a limited duration*



cannot be suspended, every endeavour should be made to dispose of the appeal on merits, more so when a motion for expeditious hearing of the appeal is made in such cases.

16. *This Court said in so many words that otherwise the very valuable right of the appellant would be an exercise in futility by afflux of time.*

17. ***When the Appellate Court finds that due to practical reasons, such appeals cannot be disposed of expeditiously, the Appellate Court must show special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. At the same time, the appellate courts can impose similar conditions when appeal is granted.”***

(emphasis supplied)

20. In ***Aasif alias Pasha*** (supra), the sentence awarded to the appellant/applicant therein was for a period of four years and the High Court had declined to suspend the substantive order of sentence. The Hon'ble Supreme Court noted that what the High Court did was just a reiteration of the entire case of the prosecution and oral evidence which had come on record.

21. The Hon'ble Supreme Court observed that the High Court should have been mindful of the fact that the appeal is of the year 2024 and the same is not likely to be taken up in near future. Ultimately, if four years are to elapse in the jail, the same would render the appeal infructuous and that would be travesty of justice. Accordingly, the order impugned before the Hon'ble Supreme Court was set aside and the matter was remanded to the High Court with an observation that while deciding plea of the appellant therein for suspension of substantive order of sentence, the High Court shall keep in mind that sentence is for a fixed term, i.e., 4 years and it is only if there are any compelling circumstances on record to indicate that the release



of the appellant therein would not be in public interest, the Court may order accordingly. Relevant paras from the said decision reads thus:

“21. The High Court should have been mindful of the fact that the appeal is of the year 2024. Appeal of 2024 is not likely to be taken up in near future. Ultimately, if 4 years are to elapse in jail the same would render the appeal infructuous and that would be travesty of justice.

22. In such circumstances, referred to above, we set aside the impugned order and remand the matter to the High Court for fresh consideration of the plea of the appellant - herein for suspension of the substantive order of sentence keeping in mind the principles of law as explained by us aforesaid. The High Court shall keep in mind that the sentence is for a fixed term, i.e. 4 years and it is only if there are any compelling circumstances on record to indicate that the release of the appellant would not be in public interest that the Court may order accordingly.”

(emphasis supplied)

22. Reference may also be had to the decision of the Hon’ble Supreme Court in ***Omprakash Sahni v. Jai Shankar Chaudhary and Another (2023) 6 SCC 123***, wherein the Hon’ble Supreme Court considered the scope of 389 Cr.P.C. in the context of cases of life imprisonment. The relevant observation made therein reads thus:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is



to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

(emphasis supplied)

23. Having noted the legal position with regard to the suspension of sentence, particularly in a case where a convicted person is sentenced for a fixed period of sentence, this Court now proceeds to consider the plea of the appellant/applicant for suspension of sentence in the case in hand.

24. As noted above, maximum punishment that has been imposed on the appellant is four years for the offence under Section 409 IPC, for which the appellant has been found guilty. Clearly, the sentence is for a fixed term.

25. This Court further notes that the appellant/applicant was also charged under Sections 420/468/471 IPC besides the charge under Section 409 IPC. The learned Trial Court has acquitted the appellant of the offences under Section 420, 468 and 471 IPC returning, *inter alia*, the following findings:

- i. the forgery of bills of two firms namely M/s. Hari Om Fabrics and M/s. S.K. Agencies could not be established by the prosecution inasmuch as the said bills were not exhibited and proved as per law.
- ii. the allegation with regard to opening of parallel accounts of ICPL by the appellant/applicant on the basis of forged Board Resolutions was not proved, rather the learned Trial Court finds that there is evidence on record to show that the complainant had the knowledge about accounts in the name of ICPL.



26. Perusal of the charge framed by the learned Trial Court under Section 409 IPC reveals that same has been framed on the allegation that the appellant/applicant dishonestly siphoned off an amount of approximately Rs.3 Crores from the complainant company by using forged documents, i.e. forged bills of some other companies, namely, M/s. Hari Om Fabrics and M/s. S.K. Agencies and also by forging two minutes of the meetings of Board of Directors on the basis of which appellant/applicant fraudulently and dishonestly got opened three different bank accounts of the complainant company in different banks in order to siphon off funds of the complainant company in his personal account and in the account of his personal company namely ACPL.

27. This Court, *prima facie*, finds merit in the submission of Mr. Hariharan that charge under Section 409 IPC is based on the allegations of the cheating and forgery and once the learned Trial Court held that the allegations of forgery and cheating have not been proved insofar as the bills of other two firms and minutes of the Board meetings are concerned, substratum for Section 409 IPC is knocked out and conviction under Section 409 IPC may not survive.

28. In view of the above, this Court is *prima facie* satisfied that conviction of the appellant/applicant under Section 409 IPC may not be sustainable.

29. Attention of the Court was invited to the evidence by Mr. Manan, learned Senior Counsel appearing on behalf of the complainant. However, at the stage of deciding the plea of the appellant/applicant under Section 389 Cr.P.C (now Section 430 BNSS) it is not appropriate for this Court to re-appreciate the evidence.



30. Insofar as the submission of Mr. Manan that various lapses have been committed by the investigating agency, which fact has also been noted by the learned Trial Court, suffice it to say that the advantage of such lapses cannot be taken by the prosecution, rather its benefit will enure to the appellant/applicant.

31. Mr. Manan also contended that complainant is proposing to prefer an appeal against the acquittal of the appellant/applicant from the charges under Sections 420/468/471 IPC. In this regard, it may be observed that in case any such appeal is preferred by the complainant, same shall be considered on its own merits and it cannot have any bearing on the plea of the appellant/applicant seeking suspension of substantive order of sentence under Section 389 Cr.P.C. passed by the learned Trial Court. It may, however, be observed that acquittal of the appellant/applicant from the charges under Section 420/468/471 IPC has rather strengthened the presumption of his innocence.

32. In view of the above, this Court does not find any compelling circumstances warranting that the substantive order of sentence of the appellant/applicant be not suspended, nor is there anything on record to suggest that release of the appellant/applicant would not be in the public interest. That apart, present appeal is of the year 2025 and the same has been admitted, which is not likely to be taken up in near future.

33. Having regard to the aforesaid facts and circumstances, this Court is of the view that the applicant/appellant is entitled for suspension of sentence.

34. Accordingly, the sentence awarded to the appellant/applicant is suspended during pendency of the present appeal subject to his furnishing a



personal bond in the sum of Rs.50,000/- with one Surety of his family member of the like amount, to the satisfaction of the learned Trial Court/JMFC/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner/applicant shall provide mobile number to the Jail Authorities concerned which shall be kept in working condition at all times and shall not change the mobile number without prior intimation to the Jail Authorities concerned.

35. The application is disposed of.

36. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

37. Order be given *dasti* under the Signatures of the Court Master.

VIKAS MAHAJAN, J

JANUARY 07, 2026

N.S. ASWAL