

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 6743 OF 2016

IN

CRIMINAL APPEAL NO.136/2015.

Kishan s/o Dadarao Patil,
age 51 years, occu. Agri.,
r/o Dhanora (Bk),
Tq. Ambajogai, Dist. Beed.

... APPLICANT.

VERSUS

The State of Maharashtra.

...RESPONDENT.

...
Advocate for Applicant : Mr.Gaware Niteen V.
APP for Respondents: Mr.K.S. Patil.
...

CORAM : V.L. ACHLIYA, J.

27th JANUARY, 2017.

PER COURT:

1. The applicant – appellant has filed this application seeking suspension / stay of conviction during pendency of the appeal.
2. Before advertng to appreciate the submissions advanced, it is necessary to consider few facts leading to filing of the present application.

3. On 12.8.2011 the Police personnel attached to the Police Station Ambejogai (Rural) visited the S.R.T.R. Medical College & Hospital at Ambejogai and recorded the statement of Samadhan Mahadeo Kalunke – the complainant as well as the present applicant who were lying admitted in said hospital. On the basis of the statement of Samadhan Kalunke, offences punishable under Sections 147, 148, 149, 323, 324, 342, 504 and 506 r.w. 34 of IPC and Section 3(1)(x) of the Atrocities Act came to be registered against the applicant and 13 other persons vide CR No.104/2011.

4. Similarly on the basis of the statement of Kishan Dadarao Patil i.e. the present applicant, offences punishable under Sections 307, 323 and 504 r.w. 34 of IPC came to be registered against Samadhan Kalunke and two others vide CR No.105/2011. After the investigation, charge-sheet came be filed against the applicant as well as the complainant.

5. In the complaint dated 12.8.2011 registered vide CR No.104/2011 the complainant has alleged that at about 9 a.m., he visited the fair price shop of Pandurang Jeevan Somwanshi for taking food-grains. However, Pandurang

Somwanshi refused to provide him food-grains and told that the stock of the food-grains is over. The complainant noticed that though the food-grains were lying for distribution in the ration shop, the shopkeeper refused to provide him food-grains on ration. When he pointed out to him that food-grain is available in the shop for distribution, the said shopkeeper told him that the food-grain lying in the shop was already given to others. Due to this reason, the complainant took out his mobile phone to call the Talathi of the village to make enquiry about distribution of food-grain from the said fair price shop. At that time, Pandurang Somwanshi the shopkeeper made phone call to the applicant and called him in the shop. Thereafter, the applicant along with 10 to 12 persons came to said fair price shop. The applicant snatched the mobile handset from the hand of the complainant and referring him by his caste, asked him to get out of that shop. He assaulted complainant by means of 1 Kg. Weight measure lying in the shop over his head. The other accused persons too assaulted him by means of kicks and fist blows as well as waist belt. The shutter of said shop was put down. He was confined in said fair price shop. After putting down shutter, the accused persons assaulted him. After some time,

they pulled him out of the shop and pushed on the platform outside the shop premises. Thereafter, the accused persons took him towards S.T. Stand. While taking him towards S.T. Stand, the accused were beating him. After investigation the, charge-sheet was filed against the applicant and 13 other accused persons in the Court of J.M.F.C., Ambejogai. In due course, the case was committed to the Sessions Court, Ambejogai.

6. On the basis of the statement of the applicant recorded in the S.R.T.R. Hospital at Ambejogai, offences punishable under sections 307, 323, 504 r.w. 34 of IPC came to be registered against said Samadhan Kalunke and two others and investigation was conducted. In the complaint registered at the instance of the present applicant, it is alleged that on 12.8.2011, he received a phone call of Pandurang Jeevan Somwanshi. He informed him that Samadhan Kalunke has come to his shop with ration cards of some other persons and insisting to provide ration of those cardholders who were not present with him. When he refused to provide ration of other cardholders, Samadhan Kalunke started abusing him. The applicant, therefore, went to the shop of Pandurang

Somwanshi to convince Samadhan Kalunke that he cannot take ration of other cardholders. When he reached the shop of Pandurang Somwanshi, Samadhan Kalunke picked up quarrel with him and assaulted by means of knife over his thigh. Mahadeo Nivrutti Kalunke and Vajjnath Tatyarao Bansode and two other persons accompanying Samadhan Kalunke also assaulted applicant by fist and kick blows. When his nephew Annasaheb Dattatraya Patil rushed to rescue him, Samadhan Kalunke also assaulted him by means of knife on his abdomen and left thigh and attempted to kill him. On the basis of the complaint lodged by the applicant, case was investigated and charge sheet came to be filed against Samadhan Kalunke and two others in the court of J.M.F.C., Ambejogai. In due course, the case was committed to the Sessions Court.

7. Since both the cases were arising out of one and the same incident and counter cases, same were assigned to one and the same court and tried as counter cases. On conclusion of trial, in Special Case No.2/2012 arising out of the CR No.104/2011 registered at the instance of Samadhan Kalunke, the learned Additional, Sessions Judge has

acquitted all the accused except the applicant. The applicant has been held guilty of the offence punishable under Section 324 IPC and section 3(1)(x) of the Atrocities Act. For committing offence under Section 324 IPC, the applicant has been sentenced to undergo R.I. for two years and to pay a fine of Rs.1000/-, in default, to suffer R.I. for one month. For committing offence under Section 3(1)(x) of the Atrocities Act, the applicant has been sentenced to suffer R.I.. for two years and to pay a fine of Rs.1000/-, in default, to suffer R.I. for one month. He has been acquitted for the offences punishable under Sections 147, 148, 149, 342, 504 and 506 r.w. 34 of IPC. Being aggrieved, the applicant has preferred the instant appeal on various grounds as set out in detail in the memo of appeal.

8. In the counter case arising out of CR No.105/2011 registered at the instance of the applicant as against Samadhan Kalunke and two others, vide judgment and order dated 14.01.2015 passed in Sessions Case No.25/2012, the learned Additional Sessions Judge, Ambajogai has acquitted all the accused. Being aggrieved, the applicant has preferred appeal in the High Court which is registered as Criminal

Appeal No.781/2015 and vide order dated 15th December, 2016 passed by the division Bench of this Court, the appeal has been admitted.

9. The applicant has preferred appeal against the impugned judgment and order of conviction dated 14.01.2015 delivered in Special Case No.2/2012. Vide order dated 12th February, 2015, this Court has admitted the appeal and further suspended execution of the substantive sentence and the applicant has been ordered to be released on bail in the sum of Rs.15000/-.

10. The applicant has moved this application seeking suspension / stay of conviction for the reasons mentioned in detail in the application. In nutshell, it is the say of the applicant that he is actively involved in social and political activities. Since the year 1990, he has served as office bearer of institutions and local bodies mentioned as under:-

Sr.No	Tenure	Office bearer/institution
1	1990-1995	Member of village level multipurpose Co-operative society, Dhanora.
2	1995-2000	Managing Committee Member of

		Ambajogai Sahakari Sakhar Karkhana.
3	1999-2000	Vice-Chairman of Ambajogai Sahakari Sakhar Karkhana.
4	1997-2000	Managing Committee Member, Bhuvikas Bank, Beed.
5	2007-2013	Member/Upsarpanch of Dhanora Village Panchayat.

11. The applicant is desirous to contest the election as a member of the Zilla Parishad, Beed from Patoda Block, District Beed. Due to his conviction under section 324 of IPC and section 3(1)(x) of the Atrocities Act, he is unable to contest the election unless the conviction is suspended. It is the case of the applicant that the applicant has fair chances to succeed in appeal. In case conviction is not suspended, it would cause irreversible damage to him.

12. I have heard Mr.Niteen Gaware, learned Counsel for the applicant and the learned APP for the State and further perused the record and proceedings.

13. Mr. Gaware, learned Counsel for the applicant has strenuously contended that the applicant is the victim of political animosity in the village. He has been falsely

implicated in the instant case at the behest of his rival group in the village. At the relevant time of the incident, the applicant was Up-Sarpanch of the village. The complainant in the case against him had contested the election of village panchayat and lost in that election. He belongs to rival group of the applicant. The complainant and other persons have encroached on the Gairan land admeasuring 16 – 17 acres from the village. As the Up-sarpanch of the village, he had taken steps to evict the complainant and other encroachers from the said land. Notices were issued to the complainant and others. Due to this reason, the complainant was on cross terms with the applicant. On the earlier day of the registration of offence, the applicant had lodged a complaint against the complainant for putting lock to the Computer Room in the school premises. On the day of the incident, the applicant received a phone call from Pandurang Somwanshi. He informed him on phone that the complainant has come to his shop with ration cards of other persons and insisting to provide ration to him in the name of those persons. On his refusal, the complainant abused him. Being Up-sarpanch of the village, the applicant visited the shop and tried to convince the complainant that he cannot demand ration in

the name of other ration cardholders. However, the complainant was not in a mood to listen and assaulted him by means of a knife over his thigh. When his nephew rushed to rescue him, the complainant also assaulted him by means of knife over abdomen and thigh and both of them were seriously injured and hospitalized. It is pointed out that the complaint of the applicant was recorded while he was lying admitted in the hospital. On the basis of the statement recorded in the hospital, offence came to be registered against the complainant. Relying on the injury certificate, the learned Counsel for the applicant has pointed out that the applicant has received stab injury over right thigh and his nephew Annasaheb Dattatraya Patil received three stab injuries in the incident dated 12.8.2011. Out of these three stab injuries, two stab injuries were caused over abdomen and one injury over thigh. The Medical Officer has described the injuries over abdomen as grievous injuries and caused by sharp, hard and pointed weapon. On the contrary, the applicant is shown to have received simple injuries which include CLW on mid parietal region and abrasion over nose and other part of the body. All the three injuries were found to be simple in nature.

14. By referring the facts of the case and the testimonies of the witnesses, and the reasons and findings recorded by the learned Additional Sessions Judge, it is contended that the judgment and order of conviction is perverse and not sustainable in law. It is pointed out that by considering the testimonies of same set of witnesses, the learned Additional Sessions Judge has acquitted 13 accused but, convicted the applicant. It is further contended that though the applicant and his nephew have received stab injuries, and cogent and convincing evidence was adduced in the counter case, the accused therein have been acquitted. He has contended that if we consider the facts of the case and the evidence on record, then the accused in the counter case were the aggressor and the present applicant has been falsely implicated in that case. In the light of the peculiar facts of the case, the learned Counsel urged to suspend the conviction. In support of the submissions advanced, the learned Counsel for the applicant has referred to and relied upon the decision of the Apex Court in the case of **Rama Narang vs. Ramesh Narang**¹, **Navjot Singh Siddhu vs. State of Punjab & Anr.**²; the decision of the Division Bench

1 1995(2) SCC 513;

2 2007(2) SCC 574;

of this Court in case of **Laxman Malhari Sable vs. State of Maharashtra**³, **Anil Chhabildas Chaudhari and Anr. vs. State of Maharashtra**⁴, and **Rajendra s/o Vishwanath Bhopale vs State of Maharashtra**.⁵

15. On the other hand, Mr. Patil, learned APP appearing for the State has opposed the application with contention that there are no exceptional circumstances existing in the case to warrant stay/suspension of the conviction. He submits that looking to the nature of evidence and sentence awarded, the request of suspension of conviction may not be entertained. In support of the submissions advanced, the learned APP has referred to and relied upon the judgment of the Supreme Court in the case of **Shyam Narain Pandey vs. State of U.P.** delivered in Criminal Appeal No.1515 of 2014 arising out of S.L.P. (Criminal) No.5654 of 2014 CRLMP No.8191 of 2014), and **State of Punjab vs Deepak Mattu**⁶ and the judgment of this Court (*Smt. Sadhana S. Jadhav, J*) **Babarrao Shankar Gholap and Anr. vs. The State of Maharashtra** delivered in Criminal Application No.1039 of

3 1997(2) Mh.L.J.780;

4 2012 CRI. L.J. 930;

5 2010 ALL M.R.(Cri) 1880;

6 2007 AIR SCW 6056;

2014 in Criminal Appeal No.261 of 2014.

16. Before appreciating the submissions advanced, it is necessary to consider the legal position as crystallized on this issue by the Apex Court. Sub-section (1) of Section 389 of Cr.P.C. vests powers with the appellate Court to suspend the execution of sentence or order appealed against during pendency of the appeal. The question of scope and ambit of powers of appellate Court, as envisaged under Section 389 of Cr.P.C., came up for consideration before the Apex Court in the case of **Rama Narang vs. Ramesh Narang** (supra). While dealing with the scope and ambit of exercise of powers under Section 389 of Cr.P.C., the Apex Court has held that suspension of conviction very much falls within the scope and ambit of exercise of powers under Section 389(1) of Cr.P.C. In para 19 of the said judgment, the Apex Court has observed, as under:

“19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some-disqualification of the type mentioned in Section 267 of the Companies Act we

see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction. Although that issue in the instant case recedes in the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. **In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the**

disqualification incurred by Section 267 of the Companies act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.”

17. In the case of ***Ravikant S. Patil vs. Sarvabhuma S. Bagali***⁷, the Apex Court again considered the purport of section 389 of Cr.P.C. and exercise of powers to suspend conviction. It is observed that the order granting stay of conviction is to be granted in a case of exceptional in nature and that too, depending upon the facts of the case. It is further laid down that the powers to stay conviction should be exercised only in exceptional circumstances where failure to stay conviction would lead to injustice and irreversible consequences. After considering its earlier decisions, the Apex Court has observed in para 16.5 as under:

⁷ (2007) 1 SCC 673;

“(16.5.) All these decisions, while recognising the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences.”

18. In the case of **Navjot Singh Siddhu** (supra), the Apex Court has reiterated the law laid down in the earlier decisions and held that the powers to stay the conviction can be resorted in a rare case depending upon the special facts of the case. In para 6 of the judgment, the Apex Court as observed, as under:

“6. The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.”

19. In the case of ***State of Maharashtra through CBI, Anti Corruption Branch, Mumbai vs. Balakrishna Dattatrya Kumbhar***⁸ while reiterating the above referred proposition of law that power to stay conviction to be exercised in exceptional circumstances, the Apex Court observed that the powers of suspension of conviction must be exercised with great circumspection and caution. In order to suspend the conviction, the applicant must satisfy the Court of the evil that is likely to befall him if the conviction is not stayed/suspended. In para 15 of the judgment, the Apex Court observed, as under:

“15. Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that, the Appellate Court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. The Court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examined whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court

⁸ (2012) 12 SCC 384;

additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.”

20. Thus, if we consider the broad guidelines laid down to exercise powers to stay / suspend conviction, then no hard and fast rules have been laid down so as to exercise such powers. There is no straight jacket formula on the basis of which it can be held that the stay of conviction is to be made. However, the courts have been cautioned in exercising such powers. The Courts are expected to consider the overall facts of the case of before it and then to consider as to whether a case of exceptional in nature is made out for exercise of such powers to prevent injustice and irreversible consequences being caused if the conviction is not stayed.

21. Now, in the light of the legal position discussed in the foregoing paras, I proceed to examine the factual matrix of the present case to ascertain as to whether a case of such exceptional circumstances has been made out to exercise powers under Section 389(1) of Cr.P.C. to suspend the conviction. As discussed, the applicant was tried along with

thirteen other accused persons for committing offences punishable under Sections 147, 148, 149, 323, 324, 342, 504 and 506 of IPC and section 3(1)(x) of the Atrocities) Act with allegations that on the date of the incident, the applicant had abused the complainant in the name of caste and assaulted him by means of 1 Kg. Weight lying in the ration shop causing injury to the complainant. On conclusion of trial, the learned Additional Sessions Judge has acquitted thirteen accused persons and convicted the applicant alone. There is no dispute as to the fact that on account of the incident dated 12.8.2011 two counter cases were registered. The complainant in the case against the applicant was the accused in the counter case registered at the instance of the applicant. In the case registered at the instance of the applicant arising out of the same incident, the complainant and two other persons were tried for the offences punishable under Sections 307, 323, 504 r.w. 34 of IPC. The fact is also not in dispute that against the order of acquittal passed by the trial Court, the applicant has preferred appeal and the same is pending for final hearing. On perusal of the judgment in both the cases, the undisputed position emerges that the applicant and the complainant belong to two rival groups in

the village and they were on cross terms with each other. The complainant in the case against the applicant had contested election of village panchayat and lost the election. The applicant got elected in the village panchayat election and at the relevant time, he was Up-sarpanch of the village panchayat. It further emerges that the complainant and few other persons had encroached over the Gairan land and the applicant was instrumental in initiating proceedings to evict them from the Gairan land encroached upon by them. It is evident from the record that on the day prior to the date of the incident, the complainant Samadhan Kalunke had locked the computer room of the school and the complaint in respect of the incident was lodged against him by the applicant. It also emerges that the complainant was actively involved in political activities and member of political party.

22. From the medical certificate produced along with affidavit, it reveals that the complainant in the case had sustained injuries such as abrasion over the nose and multiple abrasions over certain parts of body as well as CLW over head. In the injury certificate the injuries caused to the complainant Samadhan Kalunke are described, as under:

- i) CLW over mid-parietal region 2x1x0.5 cm) by Hard & Blunt weapon simple in nature.
- ii) Multiple Abrasion on body 8x5, 11x2, 8x4 cm by Hard & Blunt weapon .. simple in nature.
- iii) Abrasion over nose (1x1 cm) by Hard & blunt weapon ... simple in nature.
- iv) On X-ray examination no evidence of fracture seen.

In comparison to above mentioned injuries noted on the body of complainant the injuries caused to applicant and his nephew in same incident, appears to be comparatively serious in nature. The injuries caused to the applicant Kishan Dadarao Patil in that incident are described, as under:

- i) Stab injury on right thigh at middle 1/3 on medial surface ... 2 x 1 cm x deep muscle with profuse bleeding, & vascular injury (femoral) ... Grievous in nature ... by sharp, hard pointed weapon.

The injuries caused to Annasaheb Dattatraya Patil - nephew of the applicant in that incident are described, as under:

- i) Stab injury on left side of abdomen at the level of umbilicus ... (2 cm x 1 cm Muscle, peritoneal deep, elliptical in shape ..grievous in nature .. by sharp, hard pointed weapon.
- ii) Stab injury on left side abdomen above the groin ... 3 cmx1 cm peritoneal deep omentum protruding out ... grievous in nature ... by sharp, hard pointed weapon.
- iii) Stab injury on left lower 1/3 of thigh .. 8 cm x 1 cm .. muscle deep ... simple in nature... by sharp, hard pointed weapon.

23. Thus, if we consider the injuries caused to the applicant and his nephew in the same incident in comparison with the injuries caused to the complainant, then it appears that the applicant and his nephew sustained stab injuries that too grievous in nature. As per the panchanama, the blade of the knife was recovered from the spot of the incident. The blade was found to be lying in the shop premises. The handle of the knife shown to be recovered at the instance of the complainant as per memorandum recorded u/s 27 of the Indian Evidence Act.

24. If we consider the overall allegations made in the complaint, then it appears that the complainant has alleged that he was assaulted by fourteen persons in the shop premises, that too, by means of kick and fist blows as well as

waist belt. It is alleged that shutter of the ration shop was put down and he was confined in the shop and then the accused persons beat him for about 15 minutes. Later on, the door of the shop was opened and he was pushed on the platform outside the ration shop and then those accused persons took him towards S.T. Stand. While taking him towards S.T. Stand, the accused were continuously beating him. But, the injuries as noted on his body are found to be not of serious in nature.

25. It appears from evidence on record that the incident had occurred all of a sudden. As per the panchanama, few ration cards of the persons other than the complainant were found lying in the ration shop. It also emerges that the complainant had no ration card in his own name. The name of the complainant was shown in the ration card of his father. There is no corroboration to the testimony of the complainant from an independent person. The persons examined are found to be interested one. There are number of contradictions in the testimonies of the witnesses to the incident.

26. Thus, the grounds raised in the appeal make out an arguable case to be considered in appeal in favour of the applicant. The learned Additional Sessions Judge, though disbelieved the testimonies of the same set of witnesses against thirteen accused person and acquitted other accused but, convicted the applicant by relying testimonies of same witnesses. Nowhere it is brought on record that the injuries found on the person of the applicant and his nephew were self-inflicted. The injuries found on their person were not explained by the prosecution. It is evident from the record that the incident was not premeditated. The quarrel had taken place in the ration shop on account of demand of ration in the name of other cardholders. In the light of admitted fact that there was a political animosity between the applicant and the complainant and they were belonging to two different groups. Therefore, as contended the implication of the applicant in a false case cannot be ruled out in the facts and circumstances of the case.

27. In order to ascertain criminal antecedents of the applicant, the applicant was directed to file an affidavit mentioning therein the cases registered against him, on and

after registration of CR No.104/2011. The applicant has filed affidavit pursuant to directions of the Court and categorically stated that except the present case, no other case is pending against him. He has stated that one case was registered against him in the year, 2006 and the same has ended in acquittal. Thus, except the instant case, there is no other criminal case pending against the applicant. It is nowhere the case of the prosecution that the applicant invariably indulges in criminal activities and suspension of his conviction would lead to criminalization of politics. In this view, I am of the view that there is force in the submission of the learned Counsel for the applicant that the applicant has fair chances to succeed in appeal.

28. The appellant – applicant has been convicted and sentenced to undergo the sentence for a term of two years. The offences for which the applicant has been convicted are not punishable with imprisonment for life or death penalty. Undisputably, the incident occurred all of a sudden. The offence for which the appellant has been convicted, cannot be termed as an offence falling under the category involving moral turpitude.

29. In the appeal filed, the appellant has raised various grounds. In my view, the grounds raised in the appeal make out a case of fair chances to succeed in the appeal. The appellant was granted anticipatory bail. On conviction, the sentence of the appellant was suspended by the trial Court to enable the appellant to prefer an appeal. In appeal, this Court has already suspended the execution of the substantive sentence. There are no criminal antecedents of the appellant – applicant. In the evidence on record, there is reference to the political rivalry between the applicant and the complainant. They belong to two different political parties. The complainant had contested the village panchayat election from the rival party of the appellant and lost the election. The applicant had initiated process to evict the complainant and other encroachers from the Government land. One day prior to the incident, the appellant had lodged complaint against the complainant for his act of illegally putting lock to the computer room of the school in the village. The witnesses examined in the case are closely related to the complainant. No independent witness has been examined in the case. The applicant had sustained stab injuries in the incident. The nephew of the applicant also sustained three stab injuries in

the incident. In comparison, the complainant had sustained simple minor injuries. The injuries sustained by the complainant were described as two abrasions on nose and abdomen and CLW over head. No fracture was detected on examination of the complainant. The complaints of the appellant – applicant as well as complainant were recorded by the police while they were admitted in the hospital in injured condition. It is nowhere the case of the prosecution that the applicant and his nephew have inflicted the injuries on their body and lodged false complaint against the complainant. The appeal filed by the applicant against the judgment and order of acquittal of the complainant for offences punishable under Section 307, 323 and 504 r.w. 34 of IPC is already admitted by the Division Bench of this Court. Therefore, considering the overall facts of the case and evidence on record, I am of the view that there is arguable case to be considered on merit in the appeal filed by applicant.

30. Section 16(1)(b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 operates as disqualification for the appellant to contest the election as a Member of the Zilla Parishad, for which the notification has

already been issued and filing of nomination is to commence w.e.f. 27th January, 2017. Thus, in case the request of the applicant to suspend / stay the conviction is not entertained, the applicant – appellant will not be entitled to contest the election in view of the disqualification operating under Section 16(1)(b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and may cause injustice and irreversible damage to the appellant.

31. On due consideration of the facts of the case and the position in law discussed above, I am of the view that this is a fit case wherein the impugned judgment and order of conviction passed against the applicant – appellant by the Additional Sessions Judge, Ambejogai, deserves to be stayed for a limited purpose to enable the applicant – appellant to participate in the ensuing process of election subject to the outcome of the appeal with a further direction to expedite hearing of the criminal appeal filed by the appellant.

32. It is clarified that the observations as made above are made for limited purpose to find out the case of exceptional circumstances made out to show indulgence of court. The

observations so made be not treated as observations made as to merit of the case. It shall have no bearing upon the decision of appeal on merits.

33. In the result, Criminal Application No.6743 of 2016 is allowed in terms of prayer clause (A) subject to outcome of the appeal. Hearing of the appeal is expedited. The record & proceedings be sent to the trial Court forthwith. The trial Court is directed to expeditiously prepare the paper-book and submit the record & proceedings with paper-book within three months from the date of its receipt. On receipt of paper-book, the appeal be listed for final hearing. The criminal application is disposed of, accordingly.

[V.L. ACHLIYA, J]

Kadam.