

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.346 OF 2017
IN
CRIMINAL APPEAL NO.121 OF 2017**

Pradeep Yashwant Shirke)...Applicant

V/s.
State Of Maharashtra)...Respondent

Mr. M.K.Kocharekar, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th MARCH, 2017.

P.C. :

This is an application for suspension of conviction recorded by the learned Special Judge under the Prevention of Corruption Act, 1988 against Applicant/Accused No.1 for the offence punishable under Section 12 read with Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2 Heard learned Advocate appearing for the Applicant.
By taking me through the evidence of the Complainant, it is

argued that entire evidence against Applicant has come on record by way of omission. He is falsely implicated in the crime in question on statement of co-accused that out of amount of Rs.2,000/-, Rs.1,500/- was to be paid to the present Applicant. It is argued that the Applicant is a ward boy working in the Government Hospital having responsibility to maintain his wife and two children.

3 The learned APP opposed the application by contending that there are no special circumstances to stay the conviction. In the case in hand, the trial Court after going through the evidence adduced by the prosecution has come to conclusion that offences punishable under Prevention of Corruption Act, 1988 are proved against the present Applicant. Law in respect of stay to the conviction for the offence punishable under Prevention of Corruption Act, 1988 is well settled and reiterated in the judgment of 2018 (8) SCC 909. Paragraphs 9 to 13 of the said judgment reads thus:

“9 It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC.

Couple of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

10 In Ravikant S. Patil v. Sarvabhabhouma S. Bagali [(2007) 1 SCC 673], a three-Judge Bench of this Court has held that the power to stay the conviction ... “should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences”. In Navjot Singh Sidhu v. State of Punjab and another [(2007) 2 SCC 574], following Ravikant S. Patil case (supra), at paragraph-6, this Court held as follows:

“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.”

11 In State of Maharashtra through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar [2012 (12) SCC 384],

referring also to the two decisions cited above, it has been held at paragraph-15 that:

“15. ...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 examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court 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.”

12 In State of Maharashtra v. Gajanan and another [(2003) 12 SCC 432], and Union of India v. Atar Singh and another [(2003) 12 SCC 434], cases under the Prevention of Corruption Act, 1988, this court had to deal with specific situation of loss of job and it has been held that it is not one of exceptional cases

for staying the conviction.

13 In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands.....”

4 The above observations of the Hon'ble Supreme Court takes care of the argument of loss of livelihood because of impending departmental action. In this view of the matter, no case for stay of conviction is made out. Application is, therefore, rejected.

5 Hearing of the appeal is expedited as per its turn in the category.

(A. M. BADAR, J.)