

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1597 OF 2017
IN
CRIMINAL APPEAL NO.966 OF 2017**

Mahendra Laxman Das ... **Applicant**
V/s.
State of Maharashtra ... **Respondent**

.....
Mr.Pramod N. Patil, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

Shubhada Khot CBI/ACB, Mumbai is present in person.

CORAM : A.M.BADAR J.

DATED : 11th DECEMBER 2017.

P.C. :

1 This is a composite application for suspension of
sentence as well as for stay to the conviction of the
applicant/accused.

2 The applicant/accused was convicted for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “P.C.Act” for the sake of brevity) by the learned Special Judge and sentenced to suffer rigorous imprisonment for one year apart

from directing him to pay fine of Rs.10,000/- and in default to further undergo rigorous imprisonment for three months for the offence punishable under Section 7 of the P.C.Act, 1988. For the offence punishable under Section 13(1)(d) read with Section 13(2) of the P.C.Act, he has been sentenced to suffer rigorous imprisonment for two years apart from directing him to pay fine of Rs.10,000/- and in default of payment of fine to undergo further rigorous imprisonment for three months.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the evidence of the prosecution is discrepant as well as contradictory. He further relied on Judgment of the learned Single Judge of this Court in the matter of *Pralhad Sitaram Yeole v. State of Maharashtra*, reported in **2002 (3) Mh.L.J. 377** and argued that as per Service Rules if the conviction is not suspended, the appellant would be dismissed and if ultimately the appeal is allowed, irreparable loss would be caused to him.

4 The learned Advocate appearing for the respondent/CBI opposed the application.

5 The applicant/accused has been convicted of offences punishable under the provisions of P.C.Act, 1988. In the matter of *Shyam Narain Pandey v. State of U.P.* reported in **(2014) 8 SCC 909**, the Honourable Apex Court has observed 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, 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 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 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 and Union of India v. Atar Singh and another, 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."*

In the light of observations, no stay to the conviction can be granted. The application to that extent is rejected.

6 Short sentence is imposed on the applicant/accused and it is not possible to hear the appeal in near future and therefore, the Order :

- (i) The application is partly allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) Prayer for stay for conviction is rejected.

(A.M.BADAR J.)