

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1727 OF 2018

Vijaykumar Piraji Chinchalkar

...Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. V.M. Thorat a/w. Mr.Madhav V. Thora, Advocate for the Applicant.

Mr. P.H. Gaikwad Patil, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 31st OCTOBER 2018.

P.C. :

1. This is second application for stay to the conviction.
2. The applicant/accused is convicted of the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 by the learned Judge of Special Court, Ratnagiri. On each count, he is sentenced to suffer rigorous imprisonment for five years apart from imposition of some amount as fine and default sentence.
3. The ground on which the second application is moved for

seeking stay to the conviction is the notice issued by the State under relevant service law for termination of services of the applicant/appellant/accused.

4. The learned counsel for the applicant/appellant/accused submits that while rejecting the prayer for stay to the conviction, this Court has directed expeditious hearing of the appeal and as the paper-book is ready, the appeal may be heard finally. He submits that the State cannot terminate services of the applicant/appellant by relying on the police papers and the action under service rules is totally illegal.

5. The learned APP opposes the application.

6. The applicant/accused being an employee of the State can challenge his termination if it is not according to the provisions of law, before the concerned service tribunal. This Court is seized of the matter in appeal challenging conviction of the applicant under the relevant offence under the Prevention of Corruption act, 1988. This Court while rejecting the earlier application moved by the applicant/accused for stay of conviction bearing Criminal Application No.1296/2016 has already dealt with the merits of the

matter. In the said Order dated 1st March 2017, reasons for refusal to stay the conviction recorded under the Prevention of Corruption Act 1988 are elaborately discussed. Therefore, there is no need to repeat the same reasons while deciding the instant application. Suffice to say that this Court, vide Order dated 1st March 2017 passed in Criminal Application No.1296/2016 has already held that no case for stay to the conviction is made out and as held by the Hon'ble Apex Court in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**¹, deprivation of source of livelihood of the convict cannot be a ground for stay to the conviction.

7. So far as expeditious hearing of the appeal is concerned, this Court as of now is flooded with several criminal appeals in which, the appellants have already undergone sentence of more than five years and still their appeals are not decided as yet. This Court has giving first priority to the appellants, who are undergoing jail sentence for more than five years as per directions of the Hon'ble Apex Court in the case of **Hussain & Anr. Vs.**

1 (2014) 8 SCC 909

*Union of India*². In this view of the matter, request for early hearing of the appeal can be granted only in the category of the appeals in which the appellants are already released on bail. The present applicant/accused is already released on bail by this Court.

8. In view of forgoing reasons, the application is rejected.

(A.M.BADAR J.)

² 2017(5) SCC 702