

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.723 OF 2017

IN

CRIMINAL APPEAL NO.443 OF 2017

Ghurphekan Ram ... **Applicant**
V/s.
Union of India & Anr. ... **Respondents**

.....

Mr.P.B.Birajdar, Advocate for the Applicant.

Mr.H.S.Venegaonkar, Advocate for the Respondent No.1/UIO.

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

....

CORAM : A.M.BADAR J.

DATED : 10th JANUARY 2018.

P.C. :

1 This is a composite application for suspension of sentence, releasing the applicant/accused as well as stay to the Order of conviction of the applicant/accused recorded by the learned Special Judge, CIB, ACB vide Judgment and Order dated 28th April 2017 passed in Special Case No.19 of 2016.

2 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to ground No (z) of the application and pointed out paragraph 80 of the Judgment and

Order passed by the learned Special Judge in Special Case No.19 of 2016 and submitted that glaring mistake is committed by the learned Special Judge. In fact, the applicant ought to have been acquitted by the learned Special Judge

3 The learned Advocate appearing for the CBI argued that whatever is stated by the learned Advocate for the applicant may be a good ground for working out the matter, but in the settled position of law reflected in various Judgments of the Honourable Apex Court, in case of conviction under the Prevention of Corruption Act, 1988, there cannot be stay to the conviction.

4 I have carefully considered the rival submissions and also perused the impugned Judgment and Order of conviction and resultant sentence.

5 The learned Special Judge after considering the entire evidence on record came to the conclusion that the prosecuting agency has proved beyond reasonable doubt that the present applicant amassed the assets disproportionate to his known source of income. As assets were found to be more by 13.80 percent by the learned Special Judge, whether this conclusion is correct or not and whether the same is in consonance with the evidence on record or not will have to be adjudicated at the time of final

hearing of the appeal. At this interim stage, though the applicant has raised a ground that less income by Rs.3,00,000/- is shown, the same cannot be considered.

6 The position of law in respect of stay to the conviction is enunciated by the Honourable Apex Court in the matter of *Shyam Narain Pandey vs. State of Uttar Pradesh* reported in (2014) 8 SCC 909. paragraphs 9 to 13 of the said Judgment read 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.....”

7 In view of the law enunciated by the Honourable Apex Court, there cannot be stay to the conviction under the Prevention of Corruption Act, 1988. Hence, the prayer for stay to the conviction is rejected.

8 The applicant/accused is found to be guilty of offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and is sentenced to suffer imprisonment for a period of four years apart from payment of fine. The short sentence of imprisonment is imposed on the applicant. On 19th May 2017, this Court (Coram : C.V.Bhadang J.) has already suspended the substantive sentence of imprisonment imposed on the applicant and directed him to release on bail. The said Order is confirmed.

9 The application is accordingly disposed of.

10 Hearing of the appeal is expedited in its category.

(A.M.BADAR J.)