

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.948 OF 2017
IN
CRIMINAL APPEAL NO.835 OF 2015**

Ramchandra Maruti Parekar ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Anilkumar K. Patil, Advocate for the Applicant.

Mr.V.V.Gangurde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 2018.

P.C. :

1 This is an application for suspension of conviction or in the alternative early hearing of the appeal filed by him.

2 The applicant/accused is convicted of offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 by the learned Special Judge and he is sentenced to suffer rigorous imprisonment for six months as well as rigorous imprisonment for one year on both these counts respectively. Apart from substantive sentence of imprisonment, some fine is also imposed on the applicant/accused.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the prosecution has failed to secure presence of the complainant and as such, the initial demand as well as subsequent demand is not proved. The learned Advocate further argued that the applicant is now retired with passage of time and there are no chances that he will now dictate the terms to his subordinate. On his retirement, as the conviction is recorded against him, applicant/accused is not paid any of his retiral dues. Hence, the learned Advocate for the applicant/accused submitted that conviction recorded against the applicant/accused is liable to be set aside during pendency of the appeal.

4 The learned Additional Public Prosecutor opposed the application by contending that as per the observations of the Honourable Apex Court in the matter of *K.C.Sareen v. CBI, Chandigarh*, reported in (2001) 6 Supreme Court Cases 584, the applicant is not entitled for stay to his conviction recorded by the learned Special Judge.

5 I have carefully considered the rival submissions and also perused the material placed on record.

6 The applicant/accused was entrusted with the work of marriage registration and the complainant approached him for getting the notice of intended marriage. It is averred by the

prosecution that for issuing the notice of intended marriage, illegal gratification was sought by the applicant/accused. Though the complainant could not be produced before the learned trial Court, the prosecution has examined shadow panch Ranjana Deshmane (P.W.No.1), who testified the demand and acceptance of the illegal gratification. Even acceptance of tainted currency notice of Rs.500/- denomination is not disputed. *Prima facie* evidence shows that hands of the applicant/accused were bearing traces of anthracine powder. A receipt of Rs.50/- was also found on the spot towards legal charges and it was issued much prior to the date of receipt of an amount of Rs.500/- from the complainant in presence of shadow panch. Amount of Rs.200/- was returned to the complainant by retaining the amount of Rs.300/-. Acceptance of currency note of Rs.500/- as noted by the learned Special Judge, was not disputed. That is how the conviction came to be recorded. True it is that with passage of time, the applicant/accused has retired from public service. This aspect is fully settled by the Honourable Apex Court in the catena of Judgments including the latest one in the matter of *Shyam Narain Pandey v. State of U.P.* reported in (2014) 8 SCC 909.

Paragraph Nos.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 the light of these observations, no case for suspension of conviction is made out. The application is, therefore, rejected.

8 Hearing of the appeal is expedited, subject to pendency of jail appeals.

(A.M.BADAR J.)