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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1301 OF 2017
IN
CRIMINAL APPEAL NO.730 OF 2015**

Manesh Jagannath Kapse	..Applicant
Versus	
State of Maharashtra	..Respondent

Mr. Hrishikesh Chavan, Advocate for the Applicant.

Mrs. S. V. Sonawane, APP for Respondent - State.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 18th JULY, 2018

P.C.:-

1] This is an application for staying the impugned order of conviction. Applicant is already released on bail and his sentence is suspended during pendency of appeal.

2] Heard Mr. Chavan, learned Counsel for the Applicant and Ms. Sonawane, learned APP appearing on behalf of the Respondent-State.

3] Applicant is required to approach this Court by way of present application since by order dated 08/08/2017, his services have been terminated only on the ground that, there is no stay to the conviction

of the Applicant.

4] The application is vehemently opposed by the learned APP and relying on the Judgment of Their Lordships of the Apex Court in the case of *K.C. Sareen vs. CBI*¹, she submits that unless the party makes out an exceptional case, the order of staying the conviction cannot be passed. She submits that, the Applicant is not in a position to make out an exceptional case.

5] We have perused the evidence on record. Though prosecution basically relies on the evidence of injured witnesses viz. P.W. 8 – Vivek, P.W. 9 – Sunil and P.W. 10 – Vishal, the perusal of medical evidence of Medical Officer Dr. Pramod Pathre (P.W.11) would reveal that, injuries sustained by the aforesaid three witnesses are of simple nature. Since the State has also filed an appeal against acquittal under Section 307, matter has come up before the Division Bench.

6] Perusal of evidence would also reveal that, there are discrepancies in the evidence of all the above three injured witnesses. In any case, no specific role is attributed to the present Applicant. As a matter of fact, there is a scope to infer in view of evidence of P.W. 8 – Vivek that the present Applicant has tried to mediate in the dispute between two warring factions of the same family. Taking into consideration this aspect of the matter and further that, there are no criminal antecedents against the present Applicant, we are inclined to

¹ (2001) 6 SCC 584

allow the application.

7] In that view of the matter, application is allowed. The judgment and Order dated 16/07/2015 of conviction passed by the learned Additional Sessions Judge, Pune in Sessions Case No.332 of 2013 qua the present Applicant, shall stand stayed.

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(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)