

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 190 OF 2019
IN
CRIMINAL APPEAL NO.472 OF 2018**

Shrishail Madolappa Birajdar

...Applicant/
Appellant

versus

The State of Maharashtra

...Respondent

Mr. Ritesh Thobde, advocate for the applicant/appellant.

Mr. J. P. Yagnik, APP for the State.

**CORAM : RANJIT MORE &
M. S. KARNIK, JJ.**

DATE : 4th NOVEMBER, 2019.

P. C. :

1. The applicant is original accused No.5 in Sessions Case No.259 of 2015 before the learned Additional Sessions Judge/Special Judge, Solapur. By the judgment and order dated 8th March, 2018, the applicant is convicted for offences punishable under Sections 302, 307, 506 and 34 of the Indian Penal Code, 1860 (for short "the IPC") and sentenced to suffer RI for life for offence punishable under Section 302 of the IPC, RI for 10 years for offence punishable under Section 307 of the IPC and RI for 1 year for offence punishable under Section 506 of the IPC..

2. The applicant preferred appeal No.472 of 2018 in this Court challenging the above conviction. The appeal is already admitted. The applicant also preferred criminal application No.643 of 2018 for bail and by an order dated 18th July, 2018, the Division Bench of this Court released the applicant on bail on furnishing bail bond in the sum of Rs.10,000/- with one or more sureties in the like amount. The present application is filed for suspension of conviction in Sessions Case No.259 of 2015.

3. Mr. Thobde, learned counsel for the applicant, submitted that subsequent to the judgment and order, under which, the applicant is convicted, his services came to be terminated by the school management where he was serving as a teacher. He further submitted that the applicant thereafter has approached the School Tribunal and obtained ad-interim order to the effect that the management shall not act upon the order of the applicant's termination.

4. Mr. Yagnik, learned APP, on the contrary, placed on record the report dated 3rd November, 2019 of the Senior Police Inspector, Vijapur Naka Police Station, Solapur City. Along with the report, a communication from the Head-Master, Aadi Jambmuni Marathi School, Bale, Solapur, dated 3rd November, 2019 to the Senior Police Inspector, Vijapur Naka Police Station, Solapur City, is also annexed.

The report and the said communication shows that the applicant's services have already been terminated pursuant to the order dated 8th March, 2018, in the light of his conviction for the offences punishable under Section 302 and 307 read with Section 34 of the IPC.

5. It is obvious that the present application is filed to save the job of the applicant. Mr. Thobde, learned counsel for the applicant submitted that the applicant has an excellent case on merits and, therefore, his conviction under the order impugned is required to be suspended. The submission cannot be accepted in the light of decision of the Apex Court in **Shyam Narain Pandey versus State of Uttar Pradesh (2014) 8 SCC 909** and specifically the observations made in paragraphs 10 and 11 therein, which reads as under :

"10. In State of Maharashtra v. Gajanan and Union of India v. Atar Singh, 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.

11. 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. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed etc. and has rightly held that it is not a very rare and exceptional case for staying the conviction."

Perusal of the said judgment makes it clear that the suspension of the conviction should be granted only in exceptional circumstances and loss of public employment/promotion prospects are not relevant consideration.

6. In the light of above observation, we are not inclined to entertain the application and the same is, accordingly, dismissed.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]