

VISHWANATH
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SHERLA

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

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**CRIMINAL INTERIM APPLICATION NO.91 of 2021
IN
CRIMINAL APPEAL NO.1519 OF 2019**

Kailas Narayan Sonawane

... Applicant

Vs.

State of Maharashtra

... Respondent

Mr.S.B. Shetye i/b Mr.Kishor Sant with Ms.Priyanka Chavan for the
Applicant

Mr.Pravin Chavan, Special Public Prosecutor with Mr.S.S. Hulke,
APP, for Respondent – State

**CORAM: S.S. SHINDE &
SURENDRA P. TAVADE, JJ.**

**ORDER RESERVED ON: DECEMBER 7, 2021
ORDER DELIVERED ON: DECEMBER 9, 2021**

ORDER (PER S.S. SHINDE, J.):

1. Heard learned Counsel for the parties.
2. By the impugned judgment and order dated 31st August, 2019 in Special Case No.1 of 2014 passed by the learned Special Judge, Dhule, a total number of 51 accused including the present applicant were convicted for the offences punishable under sections 177, 201, 406, 409, 411, 420, 465 468, 471 read with

Sections 120-B, 109 and 34 of the Indian Penal Code as well as under sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer simple imprisonment for a period ranging from 5 to 7 years. The present applicant, who is arrayed as accused No.30, is sentenced to suffer a maximum simple imprisonment for 4 years and to pay a fine of Rs.1 lakh under different sections. The appeal filed by the applicant is already admitted and the applicant has been granted bail by passing an order on a separate application. The sentence of the applicant has also been suspended by passing a separate order. By way of this Application, the applicant has prayed for stay to the effect, operation and execution of the conviction recorded by the learned Special Judge, Dhule in Special Case No.1 of 2014 by judgment and order dated 31st August, 2019.

3. At the outset, the learned Counsel appearing for the applicant, on instructions, does not press the prayer clause (B) praying for relaxing the conditions of depositing the passport with the office of the High Court and directing the High Court to return the passport to the applicant.

4. Mr.Shetye, learned Counsel appearing for the applicant, has taken us through the application for stay of the impugned judgment and conviction. He submitted that the applicant was elected as Councillor of the Municipal Council, Jalgaon and has rendered invaluable service during his tenure as Councillor.

5. The applicant is an elected Corporator from Jalgaon City Municipal Corporation. The Municipal Commissioner, Jalgaon City Municipal Corporation has issued show-cause notice to the applicant on 3rd December, 2019 to show cause as to why no action be taken of declaring the applicant disqualified as a Corporator in view of section 10 of the Bombay Provincial Municipal Corporations Act. The reference by the Municipal Commissioner with prayer to disqualify the applicant has a Corporator is pending before the concerned Court wherein notices are issued to the applicant. Therefore, the learned Counsel appearing for the applicant prays for stay to the conviction recorded by the learned Special Judge, Dhule in Special Case No.1 of 2014 by judgment and order dated 31st August, 2019, till the disposal of the Criminal Appeal No.886 of 2019 pending before the High Court.

6. Learned Counsel for the applicant has tendered across the bar a copy of the order dated 27th January, 2020 in the case of one of the co-accused viz., *Gulabrao s/o. Baburao Deokar vs. The State of Maharashtra* in Interim Application No.2 of 2019 in Appeal No.1549 of 2019 where, in paragraph 7, this Court has made the following observations which are quoted as under:

“7. It is pertinent to note that the applicant has not signed a single cheque in his tenure given in favour of the Khandesh Developers. It is also not the case of the prosecution that the applicant has gained anything directly or indirectly from the said project. Even the policy decisions were not taken in the tenure of applicant. Unlike the other councilors, no payments are released to the Khandesh Builders during the tenure of the applicant. It is also not the case of the prosecution that the applicant was concerned with the Khandesh Builder. The applicant has been convicted by taking recourse to the provisions of Section 120B of the Indian Penal Code, 1860.”

7. It is also submitted that against the above order, a Special Leave Petition was filed in respect of which, by an order dated 29th September, 2020, notice has been issued by the Hon'ble Supreme Court with permission to file Special Leave Petition, however, subsequently the said Special Leave Petition has been dismissed.

8. On the other hand, Mr.Chavan, the learned Special Public Prosecutor appearing for the Respondent – State, vehemently opposed the application. He drew the attention of this Court to

certain resolutions i.e., 120 (appointment of Kabre Chaudhari as Architect for Asoda road), 121 (appointment of Kabre Chaudhari as architect for Khedi), 300 (Formation of High Power Committee), 328 (Appointment of Architect Kabre Choudhari), 271 (Appointment of Architect Prakash Gujrathi), 272 (Appointment of Architect Kabre Chaudhari), 273 (Appointment of Architect Shirish Barve), 274 (Sanction to LIG Hsg. Scheme at Tambapura), 274A (Sanction to LIG hsg. Scheme at Khanderao Nagar), 274B (Sanction to LIG hsg. Scheme at Harivitthal Nagar), 274C (Sanction to LIG hsg. Scheme at Samata Nagar), 274D (Sanction to LIG hsg. Scheme at Fukatpura), 274E (Sanction to LIG hsg. Scheme at Asoda road), 274F (Sanction to LIG hsg. Scheme at Shivajinagar), 274G (Sanction to LIG hsg. Scheme at Mehrun), 274P (Sanction to LIG hsg. Scheme at Khedi), 326 (To shift the slum to MIDC), 471 (extending the last date for accepting tenders), 20 (Sanctioning the work of Shivajinagar to Khandesh Builder), 21 (Sanctioning the work of Asoda Road to Khandesh Builder), 22 (Sanctioning the work of Fukatpura to Khandesh Builder), 23 (Sanctioning the work of Khanderaonagar to Khandesh Builder), 24 (Sanctioning the work of Harivitthalnagar to Khandesh Builder), 25 (Sanctioning the work of Samta Nagar to Khandesh Builder), 26

(Sanctioning the work of Tambapura to Khandesh Builder), 27 (Sanctioning the work of Tambapura to Khandesh Builder), 28 (Sanctioning the work of Mehrun Gaothan to Khandesh Builder), 54 (Purchase of land near Pimprala Gat No.219), 321 (To change site of work), 365 (Sanctioning Material advance of Rs.15 lakhs), 62 (Releasing the bank guarantee), 119 (Appointment of Kabre Chaudhari as Architect for Mehrun Gaothan), 262 (extension of time by three years), 432A (Sanction to revised estimates) and submitted that in all these important resolutions, the applicant was present and voted in favour of passing of those resolutions, as it can be seen from the list of Councillors present and voting during those meetings.

9. Learned Special Public Prosecutor has also taken this Court through certain paragraphs in the impugned judgment and order dated 31st August, 2019 with respect to the aforesaid resolutions and submitted that there are categorical findings of *modus operandi* and the illegalities in the appointment and sanctioning of expenditure and payments which can only be finally determined at the hearing of the appeal and in this view of the matter conviction cannot be stayed at this stage.

10. In support, the learned Special Public Prosecutor has tendered across the bar a decision of this Court in the case of **Narayanlal Mansaram Rawal vs. Union of India and Anr.**¹ which was a similar case of an application for suspension of conviction of the applicant – accused for the offence under the Prevention of Corruption Act, which decision refers to the Supreme Court decision in the case of **Ravikant S.Patil vs. Sarvabhabhouma S. Bagali**², wherein a 3 Judge Bench of the Apex Court held that the power to stay conviction should be exercised only in exceptional circumstances where failure to stay would lead to injustice and irreversible consequences. He refers to paragraph 10 thereof to submit that unless the attention of the Court is drawn to specific consequences that would follow on account of conviction, the convict cannot obtain an order of stay of conviction and that grant of stay of conviction is to be resorted to in rare cases depending upon the special facts of the case, which he submits do not exist in applicant's favour in the present case. Paragraph 10 referred to above is usefully quoted as under:

“10. In Ravikant S. Patil Vs.Sarvabhadhouma S. Bagali [(2007) 1 SCC 673], a three Judge Bench of this court has

1 2019 SCC Online Bom 4943

2 (2007) 1 SCC 673

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* [(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. Having heard the learned Counsel and having noted the aforesaid after giving an anxious consideration, we are not inclined at this stage to grant the application for stay of the conviction of the applicant. Firstly, an involvement of the applicant in the alleged offences has been demonstrated by the learned Counsel appearing for the respondent – State and secondly, there do not exist special/exceptional circumstances where failure to stay conviction would lead to injustice or irreversible consequences nor our attention has been drawn to the consequences that would follow on conviction that persuade us to stay the conviction.

Admittedly, the sentence awarded to the applicant has been suspended by this Court while admitting the appeal filed by the applicant and he is enlarged on bail. Further, similar applications filed by similarly placed accused, have been rejected by this Court.

12. In the circumstances, the application is hereby rejected. There shall however be no order as to costs.

13. Needless to mention that all the aforesaid observations are prima facie in nature and will not have any bearing on the disposal of the Appeal on merits.

14. Interim application stands disposed of accordingly.

15. All concerned to act on an authenticated copy of this order.

(S.P. TAVADE, J.)

(S.S. SHINDE, J.)