

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2470 OF 2021
IN
APPEAL NO. 769 OF 2021
WITH
INTERIM APPLICATION NO. 2469 OF 2021
IN
APPEAL NO. 769 OF 2021**

Utsav Prasad

..Appellant/Applicant
(Org. Accused No.5)

v/s.

Central Bureau of Investigation
& Anr.

..Respondent/s

Mr. Ramesh N. Prabhu for the Applicant.

Mr. P.H.Gaikwad APP for the Respondent-State.

Mr. Kuldeep Patil for the Respondent- CBI.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd NOVEMBER, 2021.**

P.C.

1. The applicant has filed this application for suspension of conviction and consequent suspension of sentence imposed by judgment dated 30.08.2021 in CBI Special Case No. 75 of 2011.

2. Heard learned Counsel for the Applicant and the learned Counsel for the Respondent CBI.

3. The learned Counsel for the Applicant submits that the

Applicant was a public servant. Though Departmental Enquiry was conducted against him, he was not dismissed from service and that he has only been discharged w.e.f. 24.9.2021. Learned Counsel for the Applicant further states that the Applicant has very good case on merits. He submits that irreversible damage will be caused to the Applicant, in case the conviction is not stayed. He has placed reliance on the judgment of the Apex Court in ***Rama Narang v. Ramesh Narang (1995) 2 SCC 513.***

4. Per contra, Shri Kuldeep Patil, learned Counsel for the Respondent states that the Applicant was a public servant and he has been convicted of charges of corruption. He submits that the Applicant has not demonstrated the exceptional circumstances which would justify stay of conviction. He has relied upon the decision of the Apex Court in ***State of Maharashtra, through CBI, Anti Corruption Branch, Mumbai vs. Balkrishna D. Kumbhar*** in Criminal Appeal No. 1648 of 2012, to contend that the conviction cannot be suspended solely on the ground that the Applicant may lose his job or that he is being deprived of the service benefits.

5. I have perused the records and considered the submissions

advanced by the learned Counsel for the respective parties.

6. The records reveal that the Applicant herein was employed as Manager and Branch Officer/ Dealing Officer, of State Bank of India, Opera House Branch. The Applicant- accused No.5 and other accused were tried in Special Case No.75 of 2011 for offences under Section 420, 468, 471 r/w. 120B of IPC and Section 13(1)(d) r/w. 13(2) of Prevention of Corruption Act. Charge against the Applicant and the other accused in brief is that during the period from 2006 to 2007 and 2008 to 2009 he and the co-accused entered into a criminal conspiracy to cheat the State Bank of India. In furtherance thereof they fraudulently and dishonestly induced the bank to disburse the loan Rs.90 lakhs to Accused No.1 on the basis of forged and fabricated documents. The Applicant and co-accused nos.4, 5, 7, 8 and 9 are alleged to have committed mis-conduct by abusing their position as public servant to obtain pecuniary advantage to Accused No.1 and thereby cheated the Bank to the tune of Rs.90 lakhs.

7. The learned Judge, after considering the evidence on record

has held the Appellant guilty of the said offences and has sentenced him to undergo sentence of imprisonment for a maximum term of 3 years and total fine of Rs.23,00,000/-.

8. The Applicant is admittedly discharged from service. He has sought stay of conviction on the ground that he has about 13 years of service with State Bank of India and that he has a very good case on merits. The question of stay of conviction has been considered by the Honourable Supreme Court in the case of State of Maharashtra vs. Balkrishna Kumbhar (supra), wherein after considering the previous decisions including the decision in Ramesh Narang relied upon by the learned Counsel for the Applicant, the Apex Court has held thus:

6. In Rama Narang v. Ramesh Narang & Ors., (1995) 2 SCC 513, this Court dealt with the said issue elaborately and held that if, in a befitting case, the High Court feels satisfied that the order of conviction needs to be suspended, or stayed, so that the convicted person does not have to suffer from a certain disqualification, provided for by some other statute, it may exercise its power in this regard because otherwise, the damage

done cannot be undone. However, while granting such stay of conviction, the court must examine all the pros and cons and then, only if it feels satisfied that a case has infact been made out for grant of such an order, it may proceed to do so and even while doing so, it may, if it so considers it appropriate, impose such conditions as are deemed appropriate, to protect the interests of the other parties. Further, it is the duty of the applicant to specifically invite the attention of the appellate court as regards the consequences, which are likely to follow, upon grant of such stay, so as to enable it to apply its mind fully to the issue, since under Section 389(1) Cr.PC., the court is under an obligation to support its order in a manner provided therein, the same being, “for the reasons to be recorded by it in writing”.

7. In State of Tamil Nadu vs. A. Jaganathan, AIR 1996 SC 2449, this Court dealt with a case wherein the High Court stayed the order of conviction for the sole reason that, in absence of such a stay, the accused was likely to lose his job. This Court reversed the impugned order therein observing:

“..... the High Court, though made an observation but did not consider at all the moral conduct of the respondent..... who was the Police Inspector....had been convicted un der Sections 392, 218 and 466 of IPC while the other respondents, who are also public servants,

have been convicted under the provisions of the Prevention of Corruption Act. In such a case, the discretionary power to suspend the conviction either under Section 389 or under Section 482 Cr.P.C. should not have been exercised. The order impugned, thus, cannot be sustained.”

8. In K.C.Sareen v. Central Bureau of Investigation, Chandigarh, AIR 2001 SC 3320, this Court examined a case wherein a government servant who had been convicted under the provisions of the Prevention of Corruption Act would lose his job in the event that the conviction was not stayed. The Court held that when a public servant is found guilty of corruption by a Court, he has to be treated as corrupt until he is exonerated by a superior Court in appeal/revision. Mere stay of the conviction during the pendency of the appeal should not confer any benefit upon such an employee, for the reason that if such a public servant is permitted to hold office and to perform official acts (unless he is absolved from such findings by a superior Court), public interest may suffer tremendously. It may also impair the moral of other persons manning such office and may further, erode the confidence of the people in public institutions, besides of course, demoralising all other honest public servants.

9. In State of Maharashtra v. Gajanan & Anr. AIR 2004

SC 1188, this Court reiterated a similar view, placing reliance upon the judgment in K.C. Sarin (supra) and Union of India v. Atar Singh & Anr. (2003) 12 SCC 434. In the latter case, this Court held that an order of conviction should not be suspended merely on the ground that non-suspension of such conviction may entail the removal of the government servant from service.

10. In Ravikant S. Patil v. Savabhouma S. Bagali, (2007) 1 SCC 673, this Court held as under:-

“It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative.....All these decisions, while recognizing the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences.” (emphasis added)

11. In Navjot Singh Sindhu v. State of Punjab & Anr. AIR 2007 SC 1003, this Court held that the Appellate

Court can suspend “an order appealed against”, i.e. an order of conviction, only if the convict specifically establishes the consequences that may follow if the operation of the said order is not stayed. Stay of conviction must be granted only in a rare case and that too, only under special circumstances.

(See also: State of Punjab v. Navraj Singh AIR 2008 SC 2962; and CBI, New Delhi v. Roshan Lal Saini, AIR 2009 SC 755).

12. Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that, 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 examined 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.

13.

14.Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the said order of suspension of sentence in a case involving corruption. It was certainly not the case where damage if done, could not be undone as the employee/respondent if ultimately succeeds, could claim all consequential benefits. ..”.

9. The principles laid down by the Apex Court in the aforesaid decision squarely apply to the facts of the present case. In the instant case, the Applicant was a public servant and he has been held guilty of offence not only under the provisions of Indian Penal Code but also under the provisions of Prevention of Corruption Act. The conviction cannot be stayed solely on the ground that the Applicant would lose his service or that it would affect the benefits of service. As held by the Apex Court even if the Applicant succeeds in the appeal he can claim all consequential benefits, Hence no irreversible damage will be caused to the Applicant who is already discharged from the service. This is not

one of the rare and exceptional cases which justifies stay of conviction.

10. As regards suspension of fine, it is seen that the Applicant has been sentenced to pay total fine of Rs.23,00,000/- by order dated 1.2.2021. The sentence of fine is suspended subject to deposit of fine amount of Rs.12,50,000/-. It is stated that pursuant to the order dated 26.10.2021 the Applicant was permitted to deposit fine amount of Rs.5,00,000/- within a period of two weeks from the date of the order. Learned Counsel for the Applicant states that pursuant to order dated 26.10.2021, the Applicant has deposited Rs.5,00,000/- and that the balance amount of Rs.5,00,000/- as stipulated in order dated 26.10.2021 will be deposited by 28.12.2021. The Applicant to deposit balance the amount within a period of six weeks from 28.12.2021.

11. The learned Counsel for the Applicant states that non-bailable warrant has been issued against the Applicant by the trial Court for non payment of fine amount. The said warrant be recalled. The order of recall of warrant shall stand vacated if the Applicant fails to deposit the fine amount of Rs.12,50,000/-

within the period as stated above.

. Application stands disposed of in above terms.

PRASANNA P
SALGAONKAR
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signed by
PRASANNA P
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Date:
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(ANUJA PRABHUDESSAI, J.)