

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

INTERIM APPLICATION NO. 1288 OF 2019
IN
CRIMINAL APPEAL NO. 1584 OF 2019

Chandrakant s/o. Baliram Sonawane .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. Chetan C. Agarwal for the Applicant.

Mr. Pravin P. Chavan, Special P. P. a/w. Mr. S. S. Hulke, APP for the
Respondent-State.

**CORAM : S. S. SHINDE &
ABHAY AHUJA, JJ.**

DATE : 13th OCTOBER, 2021.

ORAL ORDER

1. Heard learned counsel for the parties.
2. By the impugned judgment and order dated 31.08.2019 passed by the learned Special Judge (Additional Sessions Judge), Dhule in Special Case No. 01 of 2014 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, 1860 as well as under Sections 13 (1)(c), 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.
3. The present applicant, who is arrayed as accused no.11, is

sentenced to suffer simple imprisonment of 4 years and a fine of Rs.1,50,000/- (which is stated by learned counsel to be paid by the applicant). 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.

4. Mr. Chetan Agarwal, learned counsel for the applicant has taken us through the application for stay of the conviction. He submits that the applicant has M. Sc., M. Ped qualifications and was appointed as lecturer in Nutan Maratha College, Jalgaon in the year 1991 and retired on superannuation from the post of Vice-Principal. It is further submitted that the applicant was elected as councillor of Municipal Council, Jalgaon and has rendered invaluable service during his tenure as councillor.

5. Learned counsel submits that the impugned judgment and order of conviction is *per se* illegal and perverse in nature and the conclusions drawn by the Learned Sessions Court are against other accused and not against the applicant. He submits that the resolutions relied upon by the prosecution including resolution no. 300 regarding formation of high powered committee, resolution no.84 regarding grant of Rs. 3 Crores advance to contractors,

resolution no. 8 for suspending works, resolution nos. 20 to 28 sanctioning work to Khandesh Builders are resolutions for which the applicant has at no point of time consented to or voted for. Learned counsel submits that the applicant was present only on 25.10.1997 for the resolution no. 328 appointing architect Kabre and Choudhari. Learned counsel submits that from the date of sanction of the “Gharkul Scheme” till the registration of crime, the applicant was absent or opposed to the same or did not consent. Therefore, he has no role in the alleged conspiracy and no conviction can be against him including conviction under the Prevention of Corruption Act.

6. Learned counsel submits that the applicant has been a responsible representative of council and himself has never indulged in corrupt practice. He submits that as can be seen from the orders, the applicant has been enlarged on bail during the trial and has also complied with the conditions of the bail and never mis-utilized the liberty granted to him. Also the sentence has been suspended. Learned counsel submits that considering the aforesaid, conviction dated 31.08.2019 in Special Case No. 01/2014 by the Special Judge, Dhule be stayed pending the appeal, which is already admitted.

7. On the other hand, learned Special Public Prosecutor, Mr. Chavan draws attention of this Court to three resolutions viz.

resolution no. 328 dated 25.10.1997 with respect to the appointment of architect Kabre and Choudhari, resolution no.8 dated 11.04.2001 with respect to the suspension of work and sanction to price escalation and resolution no. 84 dated 11.02.2001 with respect to advance of Rs. 3 Crores to the contractors. He submits that in all these important resolutions the applicant has been present and voted for those resolutions as can be seen from the list of councillors present and voting during those meetings.

8. Learned Special Public Prosecutor has also taken this Court through paragraphs in the judgment and order dated 31.08.2019 with respect to aforesaid resolutions and submits that there are categorical findings of the *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.

9. In support, learned Special P. P. has also tendered across the bar a decision of this Court in the case of **Narayanlal Mansaram Rawal Vs. Union of India and Anr. 2019 SCC Online Bom 4943** in 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 v.**

Sarvabhabhouma S. Bagali [(2007) 1 SCC 673] where 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 to submit that unless the attention of the Court is drawn to the 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 petitioner'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 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.”

10. Learned counsel for the applicant has also tendered across the bar a copy of the order dated 27.01.2020 in the case of one of a 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.

11. It is also submitted that against the above order, a Special Leave Petition was filed in respect of which by an order dated 29.09.2020 notice has been issued by the Hon'ble Supreme Court with permission to file SLP and which is as on date stated to be pending.

12. 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 an appeal filed by the applicant and he is enlarged on bail.

13. The application is hereby rejected. There shall however be no order as to costs.

14. 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.

15. Interim Application is accordingly disposed.

16. Parties to act on an authenticated copy of this order.

[ABHAY AHUJA, J.]

[S. S. SHINDE, J.]

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