

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

**INTERIM APPLICATION NO.348 OF 2022
IN
CRIMINAL APPEAL NO.1073 OF 2021**

Suresh Sanjay Patil	.. Applicant/Appellant
<i>Versus</i>	
State of Maharashtra	.. Respondent

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Mr.Anand S. Patil, Advocate for the Applicant/Appellant.
Mr.S.V. Gavand, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 18, 2022.

P.C. :

This is an application for suspension/stay of conviction imposed vide judgment and order dated 22nd December, 2021, passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No.20 of 2015, convicting the applicant for the offences punishable under Sections 143, 147, 148, 307, 324 read with 149 of Indian Penal Code (“IPC”, for short). On each count, the applicant was sentenced to undergo imprisonment for three months, one year, two years, ten years and two years, respectively.

this Court, by preferring criminal Appeal No.1073 of 2021. The Appeal is admitted on 5th January, 2022. The applicant preferred interim application no.3452 of 2021, for suspension of sentence and grant of bail, which has been allowed by order dated 13th January, 2022.

3 The case of the prosecution is that on 10th May, 2014, P.W.2 was informed by some persons from his locality that accused are assaulting his uncle Bajirao Shripati Patil. P.W.2 Nilesh Patil, his mother Sunita Patil, cousin Yuvraj Patil (P.W.1), Aunts Housabai Patil and Laxmi Bajirao Patil rushed to the spot and questioned accused for assault. The accused were holding spade, iron rod and sticks. P.W.2 sustained injuries on head, back, legs. P.W.1 sustained injuries on head and legs. P.W.7 and others sustained injuries. FIR was lodged by P.W.2. Offences were registered under Sections 143, 147, 148, 324 and 307 read with Section 149 of IPC.

4 The applicant was granted anticipatory bail by Sessions Court at Kolhapur by order dated 4th June, 2014.

5 The applicant is a Gramsevak appointed by the Government of Maharashtra on 11th June, 2012. The appointment was confirmed and continued vide order dated 26th October, 2015.

6 Learned advocate for the applicant submitted that the applicant is public servant. He was appointed as Gramsevak. He relied on appointment letter and the show-cause notice dated 17th January, 2022, issued by Block Development Officer Class-I, Panchayat Samiti Shahuwadi. The appointment was regularised as permanent employee by order dated 26th October, 2015. Due to conviction, the State Government may dismiss him from services keeping in mind provisions of Article 311 of the Constitution of India. The applicant has been falsely implicated in this case. The dispute is over the rights relating to property. Civil suit is pending between the parties in the Court. The applicant has been falsely implicated in the case considering the fact that he is a Government servant. There is no evidence to convict him. The sentence of imprisonment has been suspended by this Court. The Appeal may not come up for hearing within short span of time. The evidence of the witnesses is doubtful. The only role attributed by some of the witnesses is assault by fist blows. The case proceeds with the fact that one Bajirao Patil was being assaulted and on receipt of the information, the complainant and other injured persons rushed to the spot. The accused then assaulted all of them. However, the prosecution has not examined Bajirao Patel. No injury was caused to Bajirao. Some of the witnesses has not even referred to the presence of the applicant at the place of incident. The

applicant was on anticipatory bail during the trial. There is no evidence to establish that applicant has shared common object. There is delay in lodging FIR. There is long lasting civil dispute between parties. The civil Courts have decided in favour of applicant's family. FIR was registered with *malafide* intention. The applicant has been implicated keeping in mind that he is Government servant and if convicted, he could be dismissed from service. The applicant apprehends that, State Government may dismiss him from services. The State had preferred application for cancellation of anticipatory bail granted to applicant. The said application was rejected by this Court by order dated 6th December, 2016. All family members of applicant including women were implicated in this case. No offence is made out under Section 307 of IPC. Injury sustained by P.W.1 and P.W.2 were not sufficient to cause death. P.W.11 has stated that injured were within normal limits till their discharge from hospital. No blood was oozing. The applicant was not present at place of incident. He relied on certain documents to claim Alibi. Independent witnesses were not examined. Learned advocate relied on circular dated 14th September, 2015, issued by Government of Maharashtra, General Administration Department, which states that in the event of Government employee being convicted for offence, he can be punished without any inquiry. He can be permitted to make representation

against such action. He also tendered letter dated 17th January, 2022, calling for explanation regarding news of conviction. In the event the conviction is not suspended/stayed, injustice would be caused to the applicant.

7 Learned advocate relied upon the following decisions:

- (i) *Ravikant S. Patil Vs. Sarvabhouna S. Bagali*¹;
- (ii) *State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar*²;
- (iii) *Shyam Narain Pandey Vs. State of Uttar Pradesh*³;
- (iv) *Navjot Singh Siddhu Vs. State of Punjab and Anr.*⁴;
- (v) *Anil Chhabildas Chaudhari and Anr. Vs. State of Maharashtra*⁵;
- (vi) *Order dated 3rd October, 2019, passed by this Court in IA No.1 of 2019.*

8 Learned APP submitted that the applicant has been convicted for the offence punishable under Section 307 of IPC. No ground is made out for granting suspension of conviction. There is sufficient evidence to convict him for the said offence. It is a settled principle of law that the powers of suspension of conviction are to be exercised in exceptional cases. This is not an exceptional case. Loss of employment cannot be a ground for stay of conviction. The applicant claim alibi now. Documents in support of alibi relied by applicant are

1 (2007) 1 SCC 673

2 (2012) 12 SCC 384

3 (2014) 8 SCC 909

4 AIR 2007 SCC 1003

5 2012 CRI. L. J. 930

doubtful since the signatures therein differ. In the case of ***Shyam Narain Pandey Vs. State of Uttar Pradesh (Supra)***, the Apex Court has refused such relief on the ground that the convict therein was convicted for the offence under Section 302 of IPC. The Apex Court has observed that the contentions that appellant will be deprived of his service livelihood, if the conviction is not stayed, cannot be appreciated. The Court can stay the conviction in the event the effect of conviction is irreversible. In the event the applicant succeeds in the Appeal, he would be entitled for all the benefits/emoluments. In all cases relied by learned advocate for applicant, the convict therein was facing disqualification or contesting elections, in the event the conviction was not stayed, they would not have been in a position to contest the election. Such situation could be said to be an irreversible circumstance. Hence, the application for suspension of conviction may be rejected.

9 It is settled law that Sub-section 389(1) of Cr.P.C., confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation order appealed against which means the order of conviction. The question has been examined by Supreme Court in ***Rama Narang Vs. Ramesh Narang and Others***⁶. In paragraph 19, it was observed as follows:

6 (1995) 2 SCC 513.

“19 That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some-disqualification of the type mentioned in Section 267 of the Companies Act we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction. Although that issue in the instant case recedes in the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted persons does not suffer from a certain disqualification provided for in any other statute, it

may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.”

10 In the case of ***Navjot Singh Siddhu Vs. State of Punjab and Anr. (Supra)***, it is observed that the person seeking stay of conviction should specifically draw the attention of Appellate Court to the consequences that may arise if conviction is not stayed. The power of suspension of conviction has to be exercised only in rare cases depending upon special facts of the case. In the case of ***Shyam Narain Pandey Vs. State of Uttar Pradesh (Supra)***, it is held that conviction has to be stayed in exceptional cases. There is no hard and fast rule or guidelines as to what are those exceptional circumstances. The Court refused to grant stay to the conviction. The appellant therein was convicted for the offence under Section 302 of IPC and sentenced to suffer imprisonment for life. In these circumstances, it was observed that, contention that the appellant will be deprived of his source of

livelihood if conviction is not stayed, cannot be appreciated. He has been convicted for deprivation of life of another person. Until he is otherwise declared innocent in Appeal, the stain stands. In the case of ***Ravikant S. Patil Vs. Sarvabhuma S. Bagali (Supra)***, the Apex Court has observed that the power to stay the conviction should be exercised only in exceptional circumstances where failure to stay conviction would lead to injustice and irreversible consequences. In the case of ***State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar (Supra)*** it was observed 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 involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, the reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that employee may lose his job, if the same is not done.

aforesaid decision, it is crystal that the powers of suspension/stay of conviction can be exercised in exceptional circumstances. It is not disputed that the applicant is a Government servant. The documents annexed to this application indicate that the consequences of conviction may result in affecting his employment. The facts of the present case indicate that there is dispute between two families on account of property civil proceedings were initiated. All the accused are family members. The alleged incident had occurred on 10th May, 2014. The complainant has alleged that information was received about assault on his uncle Bajirao Patil. The complainant and his relatives rushed to the spot and at that point of time they were assaulted by accused. P.W.1 has not witnessed assault on Bajirao Patil. He has not referred to injuries sustained by Bajirao Patil. He stated that there is property dispute between both sides and litigation is pending. It is pertinent to note that the prosecution has not examined Bajirao Patil. According to P.W.1, the applicant had allegedly assaulted with fist blows. P.W.2 is the eye witness to the incident. He is one of the injured. He has not attributed any role to the applicant. Even the presence of the applicant is not spelt out from his evidence. P.W.3 is the panch witness. P.W.Nos.4 and 5 are the panch witnesses who have not supported the prosecution case. P.W.6 is panch for spot panchanama. P.W.9 was also examined as panch witness. He has

admitted that there were no blood stains on the clothes. P.W.10 is the Engineer from the Electricity Department, who has been examined to indicate that there was electric supply in the village on the day of incident. P.W.7 is another eye witness. No role has been assigned to the applicant even his presence is not referred to specifically. P.W.8 is also the eye witness. He has not supported the prosecution case. P.W.12 has referred to the fact that there were fight between both the groups. The other witnesses are the Police Inspectors who has investigated the case. Round of alibi was not urged during trial. The applicant cannot urge it in this application. Going by the nature of evidence adduced by the prosecution, it is apparent that *prima facie* there is serious doubt about the involvement of the applicant in the crime. The submission that applicant has been implicated on account of being Government servant finds merit. Conviction of applicant under Section 307 of IPC, is debatable. The Appeal preferred by the applicant has been admitted. The sentence of imprisonment has been suspended. In the light of the factual aspects of this matter, and the evidence adduced before the trial Court, this could be termed as an exceptional case to exercise the powers of stay of conviction under Section 389(1) of Cr.P.C.

:: ORDER ::

- (i) Interim Application No.348 of 2022, is allowed;
- (ii) The conviction imposed vide judgment and order dated 22nd December, 2021 passed by Additional Sessions Judge, Kolhapur in Sessions Case No.20 of 2015, is stayed, during the pendency of Appeal;
- (iii) Interim Application No.348 of 2022, is disposed of accordingly;
- (iv) Hearing of Appeal is expedited.

(PRAKASH D. NAIK, J.)