

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.395 OF 2023
IN
CRIMINAL APPEAL NO.568 OF 2011

Vijay s/o Karbhari Golhar
Age: 55 years, Occu.: Service,
R/o. Bavi at present Ashti,
Tq. Ashti, Dist. Beed.

.. Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Ashti,
Tq. Ashti, Dist. Beed.

.. Respondent

...

Mr. R. S. Deshmukh, Senior Counsel i/b Mr. V. M. Chate, Advocate for the applicant.

Mr. A. V. Deshmukh, APP for the respondent – State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 21st June, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed for stay to the conviction that has been awarded against the applicant.

2. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. V. M. Chate for the applicant and learned APP Mr. A.

V. Deshmukh for the respondent – State.

3. The present applicant is the original accused who faced the trial i.e. Sessions Case No.29 of 2009 and the learned Additional Sessions Judge, Beed by judgment and order dated 19.09.2011 has convicted him along with certain co-accused for the offence punishable under Sections 147, 148, 452, 326, 324, 323. 506 read with Section 149 of the Indian Penal Code. They have been sentenced to suffer rigorous imprisonment for one year for committing offence punishable under Section 147 of Indian Penal Code. Further, they have been sentenced to suffer rigorous imprisonment for two years for committing offence punishable under Section 148 of Indian Penal Code. Further, they have been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/- each, in default to suffer simple imprisonment for six months for committing offence punishable under Section 326 read with Section 149 of Indian Penal Code. Further, they have been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months for committing offence punishable under Section 324 read with Section 149 of Indian Penal Code. Further, they have been sentenced to rigorous imprisonment for two years and to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months for committing the offence punishable under Section 452 read with Section 149 of Indian

Penal Code. Further, they have been sentenced to suffer rigorous imprisonment for six months for committing offence punishable under Section 506 read with Section 149 of Indian Penal Code. It will not be out of place to mention here that Criminal Appeal Nos.568 of 2011 and 579 of 2011 are the appeals challenging the conviction by those accused persons including the present appellant. Those appeals came to be admitted on 18.10.2011. By order dated 18.10.2011, the sentence was suspended and the appellant – applicant came to be released on bail.

4. Learned Senior Counsel appearing for the applicant would argue that the present applicant had filed Writ Petition No.1092 of 2012 to challenge the rejection of nomination papers of the applicant, as he had submitted those papers to contest election to the seat of Councillor of Zilla Parishad. Objection was raised for acceptance of the nomination papers under Section 16(1)(b) of the Maharashtra Zilla Parishads and Panchayat Samitis, Act, 1961. By order dated 02.02.2012, the petition was dismissed by the Hon'ble Single Bench of this Court. Thereafter, Criminal Application No.5801 of 2016 was filed for the same prayer, which is in the present application and on instructions, the said application came to be withdrawn on 01.02.2017. Thereafter, similar application was filed i.e. Criminal Application No.3220 of 2019 and the Hon'ble Single Bench of this Court by order dated 30.09.2019 rejected the same. At that time, on the request of

learned Advocate for the appellant, the hearing of Criminal Appeal was expedited. One more attempt was made by filing Criminal Application No.521 of 2022, but after making submissions, that application was withdrawn with prayer to file application for fixing the appeal for final hearing. However, in the meantime, the appeal filed by the co-accused was also tagged and Criminal Appeal No.101 of 2019 came to be filed on behalf of the original informant challenging the acquittal of present applicant and co-accused, who are convicted under other Sections, but acquitted from the offence punishable under Section 395 of Indian Penal Code and Section 25 of the Indian Arms Act as well as to challenge the acquittal of original accused Nos.2, 3 and 5 from all the charges. The said appeal came to be admitted on 28.09.2022. As per the High Court Appellate Side Rules, the appeals challenging the conviction in this case would lie before the Hon'ble Single Bench, however, in view of Criminal Appeal filed under Section 372 of the Code of Criminal Procedure, the Criminal Appeal No.101 of 2019 would lie before the Division Bench and, therefore, this Court by order dated 09.01.2023 passed an order that all the appeals would be heard together. Even the matters were taken up on the last occasion for final hearing by this Court, but in view of the subsequent order dated 09.01.2023 that the matters to come up as per its turn, it will take long time. The applicant intends to contest the elections, but since there is conviction, he is unable to contest the same and his vital rights are thereby

withheld. Therefore, the said conviction deserves to be stayed.

5. Per contra, the learned APP strongly objected the application on the ground that since already the Hon'ble Single Bench has rejected the similar application that was filed earlier by order dated 30.09.2019, then the subsequent application for the similar prayer is not maintainable.

6. At the outset, we would like to say that the Court is aware about the fact that every accused has right to get justice at the earliest. Every accused who has been convicted has a right that his appeal should be decided within a reasonable time by the Appellate Court, however, the ground reality is that there is huge pendency. This Court i.e. the Division Bench (Coram : Smt. Vibha Kankanwadi and Abhay S. Waghware, JJ.) is giving preference to the appeals of the convicted prisoners (Jail Appeals) and the position is that the appeals of the year 2015-2016 are taken up on priority basis. The number of appeals by convicts whose sentence has been suspended during the pendency of the appeal is also huge and there are matters in which the hearing of the appeal is expedited. Here also the appeal which was filed by the present appellant has been expedited, but the fact remains is that all the convicted accused are released on bail. As the original informant has filed the appeal under Section 372 of the Code of Criminal Procedure and it is admitted, definitely all the three appeals are required to be dealt with by the Division Bench and, therefore, taking into

consideration the pendency, it was directed that the appeals would be heard as per its turn.

7. What we can gather from the application as well as the submissions that the only ground that is raised is that he want to contest the election for the Zilla Parishad.

8. It is to be noted that even before the Hon'ble Single Bench, the present appellant had made an attempt to get the conviction stayed, but by order dated 30.09.2019, that application came to be rejected. Perusal of the said order would show that it was held that the case does not fall in the exceptional circumstances so as to stay the conviction. Now, this Court cannot overturn those observations, merely because it was passed by the Hon'ble Single Bench. At the cost of repetition, we would say that the appeal by the present appellant would normally lie before the Hon'ble Single Bench, but since the appeal under Section 372 of the Code of Criminal Procedure is filed, it would be before this Bench and, therefore, the first and the foremost opinion would be that the second such application is not maintainable.

9. Even if for the sake of arguments, if it is considered that such application is maintainable, then we will have to consider the legal position. The legal position was also considered by the Hon'ble Single

Bench earlier. In *Ravikant S. Patil Vs. Sarvabhouma S. Bagali*, [(2007) 1 SCC 673], the Hon'ble Supreme Court held that :-

“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 the 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 recognising 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.”

These observations are after considering the previous decisions by the Hon'ble Supreme Court.

10. Further, in *Navjot Singh Sidhu Vs. State of Punjab and Anr*, [AIR 2007 SC 1003], the Hon'ble Supreme Court held that the Appellate Court can suspend an order appealed against i.e. the 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. Further, in *State of Maharashtra Through CBI Vs. Balkrishna Dattatrya*

Kumbhar [(2012) 12 SCC 384], wherein after taking into consideration those earlier decisions, it has been observed by the Hon'ble Supreme Court that :-

“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.”

11. Here, in this case, after the order was passed by the Hon'ble Single Bench on 30.09.2019 rejecting the similar prayer, the present applicant had not challenged the said order before the higher authority and prior to that also similar application was withdrawn on 01.02.2017 and after the rejection of such application in 2019, similar application was withdrawn on 08.06.2022 and at that time, the liberty was given to file an application for fixing the case for early hearing. No doubt, by order dated 24.11.2022, the

Division Bench had fixed the appeal for final hearing on 01.12.2022, but it can be seen from the said order that it was passed only in respect of Criminal Appeal No.568 of 2011 i.e. the appeal which is filed by the present applicant only. Then it can be said that the pendency of Criminal Appeal No.579 of 2011 and Criminal Appeal No.101 of 2019, which is arising from the same judgment, was not brought to the notice of the Court on 24.11.2022. Therefore, we are also of the opinion on the basis of the parameters laid down in the aforesaid authorities that this cannot be taken as an exceptional circumstance to stay the conviction and, therefore, the application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm