

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 CRIMINAL APPLICATION NO.3093 OF 2023
IN APEAL/751/2023

SHIVRAJ VISHWAMBHAR TARKE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. C. C. Deshpande h/f
Mr. B. N. Magar
APP for Respondent-State: Mr. P. M. Kulkarni

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 25/08/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant, who is original accused No.1 in Special ACB Case No. 6 of 2016, is seeking stay of order of his conviction passed by the learned Assistant Sessions Judge, Bhokar, dt. 11/08/2023 along with suspension of his substantial sentence of his imprisonment during the pendency of this appeal.
3. Admittedly, under the impugned judgment and order, the learned Assistant Sessions Judge, Bhokar has sentenced the present applicant i.e. appellant No.1 (original accused No.1) for a period of one year and to pay fine of Rs.2,000/-, in default, SI for two months.
4. The applicant has already deposited the aforesaid fine amount and the learned trial court has already released him on bail till 11/09/2023 vide order dated 11/08/2023.
5. The learned counsel for the applicant submits that there was no satisfactory evidence against the present applicant in respect of

his alleged demand of bribe amount and its acceptance. He pointed out that the complainant in the chief-examination itself did not state anything about the demand made by the applicant by putting him under the fear of imprisonment. He also pointed out that even the panch witness i.e. PW-2 Panchal, who had accompanied the complainant at the time of alleged trap, clearly stated that on the day of trap i.e. on 30/07/2016, no demand was made by the applicant in respect of the bribe amount. According to him, the learned trial court has ignored the basic ingredients which were to be established for conviction under Section 7 of the Prevention of Corruption Act and wrongly convicted the applicant. He further pointed out that the department of the applicant has issued him notice of termination for which he is to file his reply within near future. He expressed fear that if the applicant is terminated, then it would be difficult for him to secure pension and therefore, stay to his conviction is required.

6. On the other hand, the learned APP strongly opposed the application on the ground that the learned trial court has rightly considered the material on record and relied upon various panchanamas namely demand verification raid panchanama, spot panchanama and raid panchanama in proper perspective. According to the learned APP the applicant has not been terminated yet but the opportunity of explanation is only given to him.

7. Heard rival submissions. Also perused the documents on record.

8. There cannot be any serious dispute as regards the suspension of substantial sentence of imprisonment of the applicant during the pendency of appeal. However, for stay of his

conviction order, certain aspects are to be considered since the stay of conviction is to be granted in exceptional case by applying judicious mind and to examine the facts and circumstances involved in the case. In the instant matter, the examination of complainant itself indicates that the complainant – Digambar Bagade i.e. PW-1 had not initially supported the prosecution case. Though in the cross-examination he supported the case of prosecution, but there also on some aspects he gave evasive answers. Further, it is extremely important to note that the panch witness i.e. PW-2 Pralhad Panchal has also admitted in his cross-examination that on 28/07/2016 and 29/07/2016 there was no demand of bribe by the applicant and therefore, it was decided to set up a trap on 30/07/2016. This witness has further admitted that on 30/07/2016 also the applicant had not demanded bribe amount and not accepted the same. It appears that despite such admissions, the learned trial court has convicted the applicant by observing that demand and acceptance were proved. Moreover, it also appears from the impugned judgment and order that the learned trial court was of the view that imprisonment for the period of five years was proper to the applicant but in fact actually sentenced him only for one year.

9. Admittedly, a notice of termination from service has been issued to the applicant by his department, which is dated 14/08/2023. Though the applicant is having an opportunity to file his explanation against the admissions mentioned in the said notice but considering the discrepancies in the evidence of prosecution and in view of the observation of Hon'ble Apex Court in the case of *State of Maharashtra, through CBI Anti Corruption Branch Mumbai vs. Balakrishna Dattatrya Kumbhar, reported in*

(2012) 12 SCC 384, the applicant has made out the case for stay of his conviction and also for suspension of his sentence of imprisonment during pendency of this appeal. Hence, the following order is passed.

ORDER

- A). The application is hereby allowed.
- B). The impugned judgment and order of conviction passed by the learned Assistant Sessions Judge, Bhokar, District Nanded in Spl. ACB Case No.6 of 2016 dated 11/08/2023 is stayed and the substantive sentence of the imprisonment i.e. of one year of the applicant is suspended during the pendency of this appeal on same condition as imposed by the learned trial court while releasing him on bail vide order dated 11/08/2023. However, the applicant shall execute fresh bonds before the learned trial court.
- C). Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)