

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

**CRIMINAL APPLICATION NO.3950 OF 2023
IN CRIMINAL APPEAL NO.751 OF 2023**

1. The State of Maharashtra
Through Bhokar Police Station,
District : Nanded.
2. The State of Maharashtra,
Through the office of
Dy. Superintendent of Police (ACB)
Nanded Range, Nanded ... APPLICANTS

VERSUS

Shivraj s/o Vishwambhar Tarke,
Age : 51 years, Occu.: Service,
R/o.: Snehnagar Police Colony,
Nanded, Tq. & Dist. Nanded ... RESPONDENT

**AND
CRIMINAL APPLICATION NO.3951 OF 2023
IN CRIMINAL APPEAL NO.825 OF 2023**

1. The State of Maharashtra
Through Bhokar Police Station,
District : Nanded.
2. The State of Maharashtra,
Through the office of
Dy. Superintendent of Police (ACB)
Nanded Range, Nanded ... APPLICANTS

VERSUS

Sanjay Umakant Rajure,
Age : 52 years, Occu.: Nil,
R/o.: Laglud, Tq., Bhokar,
Dist. Nanded ... RESPONDENT

....
A.P.P. for the Applicant-State : Mr. R. D. Sanap
Advocate for the Respondents : Mr. Chaitanya C. Deshpand h/f
Mr. Balasaheb N. Magar
....

CORAM : SANDIPKUMAR C. MORE, J.
DATED : 06/11/2023.

P. C. :

1. The applicant - State has filed the Criminal Application No.3950 of 2023 for recalling the order dated 25/08/2023 passed by this Court in Cri. Application No.3093 of 2023 in Criminal Appeal No.751 of 2023. Similarly, the State has filed Criminal Application No.3951 of 2023 for recalling the order dated 08/09/2023 passed by this Court in Cri. Application No.3392 of 2023 in Criminal Appeal No.825 of 2023. Vide the aforesaid orders, this court has granted stay to the conviction imposed upon respondents in both the applications, who were in fact accused in Special ACB No. 6 of 2016.

2. Admittedly, the respondent Shivraj Vishwambhar Tarke is convicted in the aforesaid case for the offence u/s 7 of Prevention of Corruption Act and sentenced to suffer imprisonment for one year and fine of Rs.2,000/- i.d. for two months and respondent Sanjay Umakant Rajure is convicted for the offence u/s 12 of the same Act

and sentenced to suffer imprisonment for one year and fine of Rs.2,000/- i.d. for two months.

3. The learned APP submits that the order of staying conviction of the respondents in both these applications, is based on wrong interpretation of the order of Hon'ble Apex Court in the judgment reported in **2012 DGLS (SC) 557** in the case of **State of Maharashtra through CBI, ACB, Mumbai vs. Balkrishna Dattatrya Kumbhar**. He pointed out that the respective learned counsel of the respondents had not placed on record the complete judgment in the aforesaid case, but relied only on some observations in the case which were reproduced in an another judgment dated 10/06/2021 passed by this Court in Criminal Application (APPA) No.301 of 2021 in Criminal Appeal No.150 of 2021 in the case of **Gurudas Zade vs. State of Maharashtra**. The learned APP submits that the Hon'ble Apex Court in case of **Balkrishna Kumbhar (supra)** had in fact laid down the ratio that order of stay of conviction cannot be passed in case of conviction under Prevention of Corruption Act as it is an offence against society.

4. On the contrary, the respective learned counsel for both the respondents in these applications strongly opposed the applications on the ground that this court not only considered the

observation of Hon'ble Apex Court, but also considered other aspects for staying the conviction order of the respondents.

5. Heard rival submissions. Also perused the documents on record alongwith the complete judgment of the Hon'ble Apex Court in case of ***Balkrishna Kumbhar*** (*supra*) produced on record by the learned APP.

6. It is significant to note that this court while staying the conviction of the respondents in both the concerned applications of the respondents, has made following observation specially in order dated 25/08/2023 as follows.

" 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. Balkrishna 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."

The subsequent order dated 08/09/2023 is based on the aforesaid order dated 25/08/2023. However, while arguing the Criminal Application No.3093 of 2023 the learned counsel for the respondent Shivraj Vishwambhar Tarke had not placed on record complete judgment of the Hon'ble Apex Court in the case of ***Balkrishna Kumbhar*** (*supra*), but he had only placed on record order of this court dated 10/06/2021 in Criminal Application (APPA) No.301 of 2021 in Criminal Appeal No. 150 of 2021 in the case of Gurudas Zade vs. State of Maharashtra. In this order, only the following observation of the Apex Court in the case of ***Balkrishna Kumbhar*** (*supra*) has been reproduced.

"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 re pleaded by the applicant, in a judicious manner and examine 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."

7. However, in the aforesaid observation the Hon'ble Apex Court has discussed the aspects which are to be considered for passing stay of conviction of the accused generally. It is extremely important to note that the learned counsel for the respondents / accused had shown only this part and did not produce the complete judgment of the Hon'ble Apex Court. The learned APP has produced on record a complete copy of judgment in the aforesaid case, wherein the Hon'ble Apex Court has ultimately laid down the ratio, that stay of conviction of the accused persons in the cases under the provisions of Prevention of Corruption Act cannot be granted. For this purpose, the Hon'ble Apex Court in

case of *Balkrishna Kumbhar* (supra) has referred its earlier observations which are reproduced as below.

"7. *In State of Tamil Nadu v. 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 under Sections 392, 218 and 466 I.P.C. 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. Savbhuma 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.”

14. *The aforesaid order is therefore, certainly not sustainable in law if examined in light of the aforementioned judgments of this Court. 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. The submission made on behalf of the respondent, that this Court should*

not interfere with the impugned order at such a belated stage, has no merit for the reason that this Court, vide order dated 9.7.2009 has already stayed the operation of the said impugned order.

15. *Thus, in view of the above, the appeal is allowed and the impugned order dated 8.4.2008 is hereby, set aside."*

Thus, it appears that the Hon'ble Apex Court has ultimately held that there cannot be any stay of conviction order of the accused for the offence under the provisions of Prevention of Corruption Act. Obviously, while passing the aforesaid order dated 25/08/2023 the complete judgment of Hon'ble Apex Court in the case of ***Balkrishna Kumbhar*** (*supra*) was not before this court. It is extremely important to note that the Hon'ble Apex Court had in fact reversed the order of this court dated 08/04/2008, whereby conviction order of accused involved in the offence under the provisions of Prevention of Corruption Act was stayed. Further, it appears that this court vide order dated 30/10/2017 in Criminal Application No.4671 of 2017 in Appeal No. 241 of 2017, relied by the learned APP has also refused to stay the order of conviction as per law laid down by the Hon'ble Apex Court in the case of ***Balkrishna Kumbhar*** (*supra*).

8. Thus, on going through the complete judgment of the Hon'ble Apex Court in the case of ***Balkrishna Kumbhar*** (*supra*) and the law laid down therein, the orders dated 25/08/2023 and 08/09/2023 as mentioned above, are required to be recalled to the extent of stay of conviction order of both the respondents. As such, following order is passed.

ORDER

- A) The Criminal Application No.3950 of 2023 is hereby partly allowed and the order dated 25/08/2023 passed by this Court in Criminal Application No.3093 of 2023 in Criminal Appeal No.751 of 2023 is hereby recalled only to the extent of stay of conviction order of the present respondent - Shivraj Vishwambhar Tarke i.e. original accused No.1 in Special ACB No.6 of 2016.
- B) The Criminal Application No.3951 of 2023 is hereby partly allowed and the order dated 08/09/2023 passed by this Court in Criminal Application No.3392 of 2023 in Criminal Appeal No.825 of 2023 is hereby recalled only to the extent of stay of conviction order of the present respondent - Sanjay Umakant

Rajure i.e. original accused No.2 in Special ACB No.6 of 2016.

- C) The applications are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

Later on -

9. Learned counsel for both the respondents in these applications, sought continuation of the interim relief.

10. However, this court after considering the complete judgment of Hon'ble Apex Court in the case of ***Balkrishna Kumbhar*** (supra) has come to the conclusion on merit that there cannot be any stay to the conviction order in anti-corruption cases.

11. In view of the same, the request for interim relief is hereby rejected.

(SANDIPKUMAR C. MORE, J.)