



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 222 OF 2024
IN
CRIMINAL APPEAL NO. 111 OF 2023

Surekha Shamlal Totla
Age 61 years, Occu. Retired Medical Officer,
R/o. Marwadi Lane, Erandol, Tq. Erandol,
Dist. Jalgaon. ... Applicant

Versus

The State of Maharashtra ... Respondent

.....
Mr. Niraj Chudiwal h/f Mr. Satej S. Jadhav, Advocate for the
Applicant.

Mr. S. M. Ganachari, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 26.09.2024

Pronounced on : 07.10.2024

ORDER :

1. In this application, convict who has preferred Criminal Appeal No. 111 of 2023, has put up prayers for stay to the conviction recorded by learned Additional Sessions Judge, Jalgaon in Sessions Case no. 182 of 2012.

2. Learned counsel for the applicant submitted that present applicant is retired Government servant who was a medical officer. That, she was tried under the provisions of Section 304(II), 312, 314,

315 of IPC, and under the provisions of the Medical Termination of Pregnancy Act. Against said judgment and order of conviction, she has preferred appeal before this Court. The appeal is of the year 2023. Since conviction, victim is deprived of pensionary benefits. She is facing financial crisis. That, if conviction awarded by the trial court is stayed, she will stand beneficiary of pension. There is no other source of income for her. Even in appeal, there is good case on merits. In spite of no or weak evidence, guilt has been recorded and hence, for above reasons, learned counsel prays for stay to the conviction passed by learned Additional Sessions Judge during pendency of the appeal. Learned counsel has placed reliance on the following rulings :

1. ***Dr. Shubash Singh v. Maharashtra Medical Council***
[Writ Petition No. 7560 of 2024 decided on 07.10.2024 by the Division Bench of this Court at Principal Seat.
2. ***Chanda Ram Shivsharan v. The State of Maharashtra***
[Interim Application No. 1647 of 2023 in Criminal Appeal No. 173 of 2022 decided on 09.08.2023 by Single Judge of this Court at Principal Seat.
3. ***Gurudas Maruti Zade v. State of Maharashtra*** AIR OnLine 2021 Bom 1599.

3. Above application is strongly opposed by learned APP, who pointed out that no good ground for stay to conviction is made out and according to learned APP, the application is devoid of merits.

4. After considering submissions advanced by both sides, it seems that present applicant was convicted for offence under Sections 304(II), 312, 314, 315 of IPC and under Sections 5(3) and 5(4) of the Medical Termination of Pregnancy Act, while she was officiating as medical officer. It further emerges that against the judgment and order of conviction, she has preferred appeal bearing Criminal Appeal No. 111 of 2023 and same is still *subjudice*. Relief prayed now is grant of stay to the conviction. Fundamental ground and case tried to put forth is that because of conviction, applicant is not entitled for pensionary benefits.

5. Before advertng to the entitlement of present applicant for relief of stay to the conviction, it would be appropriate to discuss the settled law for entitlement of such relief and the circumstances in which such relief is permissible. In number of cases, including the cases of *Navjot Singh Sidhu v. State of Punjab* (2007) 2 SCC 574 ; *Ravikant S. Patil v. Sarvabhoulma S. Bagali* (2007) 1 SCC 673 ; *K. C. Sareen v. CBI* (2001) 6 SCC 584 ; *B. R. Kapur v. State of T.N.* (2001) 7 231 ; *Shyam Narain Pandey v. State of Uttar Pradesh* (2014) 8 SCC 909, law to that extent has been elaborately discussed and it has been reiterated that appellate court is empowered to grant stay to the order

of conviction, but only in rare cases and when exceptional case has been made out.

6. Thus, what is culled out from above judicial precedents is that relief of stay to conviction is permissible only in rarest of rare case and such power cannot be exercised in casual or routine manner. Only when such circumstances and contingencies are demonstrated, such relief can be extended. Here, after considering the submissions, except the ground of holding pensionary benefits, no other convincing ground has been made out. Stoppage of pensionary benefits is a consequence of conviction of a Government servant. Therefore, This Court does not find it expedient to extend the relief as prayed. The rulings relied by learned counsel for the applicant differ in facts and cannot be applied to the case in hand. Hence, I proceed to pass the following order:

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]