



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 298 OF 2022
IN
CRIMINAL APPEAL NO. 55 OF 2022

Syed Farooq Ali Syed Nushrat Ali
Age : 48 years, Occu: Councillor
R/o : Shahinshah Nagar, Beed,
Tq. & Dist. Beed.

... Applicant
[Orig. Accused No.1]

Versus

The State of Maharashtra
Through Station Officer/Police Inspector,
City Police Station, Dist. Beed.

... Respondent

.....
Mr. Rajendra S. Deshmukh, Senior Advocate a/w Mr. Shriram
Deshmukh i/by Mr. Devang R. Deshmukh, Advocate for the Applicant.
Mr. D. R. Korade, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.10.2024
Pronounced on : 24.10.2024

ORDER :

1. Present application is at the instance of original convict/appellant, urging for relief of stay to the very conviction rendered by learned trial court i.e. by learned Sessions Judge, Beed in Sessions Case No. 25 of 2020 on 20.12.2021, holding him guilty for offence punishable under Sections 332, 353, 504, 506 r/w 34 of IPC.

2. At the outset, it needs to be noted that after conviction, the applicant moved this Court with Criminal Application No. 299 of 2022 for suspension of sentence and grant of bail, and record shows that by orders dated 26.02.2022, above reliefs were extended to him.

Now, instant application has been pressed into service with specific prayer for stay to the very conviction.

3. Learned senior counsel pointed out that applicant, who preferred Criminal Appeal No. 55 of 2022, was elected as a Councillor for a term from 2006 to 2011 in Beed Municipal Council and was also holding the post of Vice President of the Council, he again contested for the post of Councillor in the year 2016 and was again elected and was holding key positions as leader of Kaku Nana Aghadi, a standing committee member, as Vice President of Nationalist Congress Party and also worked as Chairman of Water Supply Committee. Thus, above were his political standings and now he is aspiring to contest the upcoming elections of Beed Municipal Council. However, due to conviction rendered by learned Sessions Court for a period of two years, he has incurred disqualification to further contest the election, in view of Section 16 of the Maharashtra Municipal Councils and

Nagar Panchayats, Industrial Townships Act, 1965. That such disqualification would cause irreparable loss if the conviction is not stayed by this Court.

4. Learned senior counsel further pointed out that in above political background, applicant is also desirous of contesting upcoming Legislative Assembly Elections. He is a strong contender. Already from various sources, his candidature is almost confirmed and news to that extent are already taking round in the media. Resultantly, conviction rendered by learned trial Judge would result in disqualification, disabling him from filing nomination and thus, both, his personal rights as well as right to get elected is in jeopardy and would be affected.

5. Learned senior counsel also pointed out the nature of social services and public services rendered by him during Covid pandemic and his such services being acknowledged and having achieved respect in the society. In the light of above background, in the instant application, grounds put forth in para 6, are that conviction is against settled principles of law, equity and justice; that he never misused liberty; right of suspension of sentence to be a statutory right; there is manifest error on the part of learned trial court in not considering

defence that he was not present at the time of alleged incident; that there is total non-application of mind to the facts and evidence on record. Since ground (G) onwards, evidence and observations of trial court in the judgment are borrowed and reproduced.

6. State has opposed both above application and the prayers raised therein by placing on record affidavit emphasizing that on full-fledged trial, conviction of the applicant has been rendered. That, prayers for stay to conviction can be granted only in rarest of rare case and on special case being made out. That, here, neither of the contingency or condition is substantiated. That, disqualification incurred is consequent to the conviction. Learned APP highlighted Section 8(3) of the Representation of People Act, 1951 for opposing the above relief.

LEGAL POSITION

7. Before adverting to the entitlement of present applicant for relief of stay to the conviction, it would be fruitful to give a brief account about legal precedents on the issue of entitlement for relief of stay to conviction. In number of cases, including the cases of *Navjot Singh Sidhu v. State of Punjab* (2007) 2 SCC 574 ; *Ravikant S. Patil v. Sarvabhuma 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 SCC 231 ; ***Shyam Narain Pandey v. State of Uttar Pradesh*** (2014) 8 SCC 909, some of which are also relied by learned senior counsel herein, 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.

In ***Navjot Singh Sidhu*** (supra), the Hon'ble Apex Court has held as under:

“Section 389(1) CrPC confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. Thus an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.”

In ***Rama Narang v. Ramesh Narang*** (1995) 2 SCC 513, which is also referred in ***Navjot Singh Sidhu*** (supra), the three-Judge Bench of the Hon'ble Apex Court held in para 19 as under

“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 to 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 person 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.”

In ***Lok Prahari through its General Secretary v. Election Commission of India and others*** (2018) 18 SCC 114, the Hon’ble Apex Court has held that the power of the appellate court under Section 389 Cr.P.C. includes the power, in an appropriate case, to stay the conviction. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the

consequence which will ensue if the conviction were not to be stayed. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice.

In ***Ravikant S. Patil v. Sarvabhouma S. Bagali*** (2007) 1 SCC 673

also, similar views are echoed in para 15 which reads 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 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. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying that consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of

conviction continues to operate even after stay of conviction.”

8. Thus, considering the ratio that is culled out from above quoted judicial pronouncements, it is manifest that, relief of stay to conviction is permissible **only in rarest of rare case**. That, power to stay conviction is by way of an exception. Before such power is exercised, the appellate court must be convinced and made aware of the consequences which would ensue if conviction is not stayed. In short, it has to be demonstrated that, if relief of stay is not granted, applicant would suffer such irreparable loss which cannot be made up and situation cannot be reversed.

9. Keeping above judicial precedent in mind, case put forth for relief of stay is examined with care and caution. What is thereupon emerging is that, applicant in his entire application, initially set up a case that he was twice elected as Councillor and officiated on various posts within Beed Municipal Council and that he had acquired good deal of reputation and respect during difficult times of Covid pandemic, more particularly for the service rendered by him to the public at large. This application seems to be tendered for relief of stay to conviction on 19.01.2022 with prayers for stay/suspension. Subsequently, amendment has been carried out by inserting para 5-A

on 17.10.2024 in view of order of this Court dated 17.10.2024 and fresh contentions are raised that now, after declaration of upcoming Legislative Assembly elections, he is desirous of contesting elections and he has bright chances of being nominated as a candidate for a political party.

Thus, what is emerging is that aspirations for contesting elections is the principal and fundamental ground for pressing prayers of stay to conviction. In para 5-B, it is asserted that applicant has personal right and his right to elect would be affected if relief of stay to conviction as prayed is not granted.

10. Admittedly, upon conviction rendered in Sessions Case No. 25 of 2020 dated 20.12.2021, both applicants are held guilty for offence under Section 332, 353, 504 and 506 r/w 34 of IPC. Precise charge was damaging wall of control room, obstructing public servant, man-handling as well as abusing them and issuing life threats. Case of prosecution rested on evidence of as many as 6 witnesses, amongst whom, there were eye witnesses who were also working in the same department. There is material that present applicant Syed Farooq issued directions to continue demolition work. Charges are said to be proved beyond reasonable doubt for commission of offence under

Sections 332, 353, 504 and 506 r/w 34 of IPC. Consequently, on full-fledged trial, learned Sessions Judge recorded guilt only on getting convinced about availability of evidence. Admittedly, appeal preferred by them is admitted and relief of suspension as well as grant of bail is already extended.

11. As is the settled position, powers to stay are to be exercised by the appellate court only with complete circumspection and only in exceptional and rarest of the rare case. It needs to be noted that though right to elect has been asserted, the Hon'ble Apex Court, in the case of *Jyoti Basu and others v. Debi Ghosal and others* MANU/SC/0144/1982, in para 9, observed as under :

“9. Right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. (emphasis laid) It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of the statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore subjective statutory limitations.”

Likewise, recently also, the Hon'ble Apex Court reiterated and echoed similar view in the case of *Vishwanath Pratap Singh v.*

Election Commission of India and another 2022 LiveLaw (SC) 758, wherein reference was made to another judgment in the case of *Javed v. State of Haryana* (2003) 8 SCC 369, holding that right to contest election is neither a fundamental right nor a common law right.

12. Therefore, the above both judicial pronouncements settles the contention raised by the applicant that he has a right to elect.

13. Further, in the considered opinion of this Court, at this juncture, it is only the aspiration of applicant to contest election. No concrete material has been placed on record to demonstrate that he is chosen or nominated or shortlisted as a candidate by a particular political party to contest the election from Beed Constituency. Therefore, for such reason also, mere eventuality or likelihood of getting candidature, does not fit in the legal requirements of rarest of the rare case calling upon indulgence of appellate court to stay the very conviction. In a way, present application is virtually premature.

14. Above all, the legislative intent, object and purpose of incorporating Section 8(3) of the Representation of People Act cannot be lost sight of, nor its purpose can be frustrated without sufficient cause. Appellate court whose jurisdiction is invoked for granting stay

to the very conviction, has to be convinced that, exceptional case does exist and that there is impending danger of consequences, which are likely to ensue, are so eminent that relief of stay to conviction is necessary. To this extent, nothing has been shown to the court so as to exercise the exceptional powers. None of the grounds taken recourse to and put forth in support of relief are potent or so exceptional so as to entitle applicant for relief of stay to conviction.

15. Learned senior counsel laid much emphasis on the above referred cases like *Navjot Singh Sidhu* (supra) and the case of *Hardik Bharatbhai Patel v. State of Gujarat* MANU/GJ/0492/2019, however, in the case of *Navjot Singh Sidhu*, facts were distinct and were also dealt by the Hon'ble Apex Court in para 7, wherein it is observed that the applicant Navjot Singh Sidhu was a sitting member of Parliament on the date of conviction and he, on his own, had tendered resignation immediately from the membership of Lok Sabha and thereafter expressed his intentions to re-contest. Keeping such facts in mind, the Hon'ble Apex Court held that his application needs consideration. Here, applicant is already beneficiary of suspension of sentence during pendency of appeal and equally beneficiary of bail during pendency of appeal. Therefore, above referred case cannot be equated. As regards to case of *Hardik Patel* (supra) is concerned, it

cannot be equated with the facts of the case in hand for the simple reason that initially application for stay to conviction was tendered in January and now, after declaration of State Elections, attempt is made to amend the grounds and matter is got circulated showing urgency.

However, at the cost of repetition, for above quoted reasons, this Court is not convinced about existence of exceptional case or case to be rarest of the rare one necessitating indulgence to stay the very conviction.

16. For all above reasons, as no case is made out for grant of relief as prayed, application deserves to be rejected. Accordingly I proceed to pass following order:

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]