



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1316 OF 2024
IN
CRIMINAL APPEAL NO. 308 OF 2023

Kanifnath s/o Pandharinath Nimse,
Age : 40 years, Occu: Agri/Service,
R/o. Nimse Vasti, Walunj,
Tq. and Dist. Ahmednagar.

... Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Nagar Taluka Police Station,
Tq. and Dist. Ahmednagar.

... Respondent

.....
Mr. Rahul R. Karpe, Advocate for the Applicant
Mr. S. M. Ganachari, APP for Respondent-State
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 21.03.2024

Pronounced on : 28.03.2024

ORDER :

1. The applicant/appellant (convict) has pressed into service instant application praying to stay the conviction awarded on 29.03.2023 by learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 336 of 2016.

2. Elaborating for the above relief, learned counsel for the applicant submits that present applicant is a Government Servant in Land Records Department. That, he was arraigned and tried in Sessions Case No. 336 of 2016 for offences punishable under Sections 307, 324, 323, 504, 506, 427, 201 r/w 149 of the Indian Penal Code [IPC], Section 4/25 of the Arms Act and Section 37(1)(3)/135 of the Maharashtra Police Act.

It is further submitted that applicant is held guilty for offences under Sections 143, 147, 148, 307 r/w 149, 325 r/w 149, 324 r/w 149, 323 r/w 149, 506 r/w 149 of IPC and under Section 4/25 of the Arms Act and sentenced to suffer 10 years imprisonment and to pay fine.

3. It is further submitted that against said judgment and order of conviction, applicant/appellant has preferred Criminal Appeal No. 308 of 2023 by invoking Section 374(2) of Cr.P.C. and the same is pending.

4. It is further submitted that on preferring criminal appeal, this Court was pleased to suspend the sentence by order dated 17.04.2023 and even further pleased to enlarge applicant on bail. According to him, today there is urgent need to stay the conviction as applicant is

in receipt of a communication from higher officer of his department i.e. from the Deputy Director of Land Records, Nashik Division, Nashik, conveying that department is proposing to terminate him from services itself and he is called upon to tender his say within ten days. Learned counsel took this Court through the communication annexed herewith baring outward no. क्र.आस्था-१/बडतर्फ-ज्ञापन/वे. श्री.निमसे/२०२४ नाशिक दि./०३/२०२४.

5. It is further strenuously submitted that after conviction, appeal has been preferred and even applicant is on bail and equally, his sentence is suspended by this Court. However, if there is no stay to the conviction, then, in view of above communication from the department, he would be terminated from his service for once and all, and as such he would be put to great injustice and loss. By placing reliance on the following rulings, learned counsel for the applicant/appellant seeks indulgence of this Court and prays for stay to the conviction.

1. ***Chanda Ram Shivsharan v. State of Maharashtra*** 2023 SCC OnLine Bom 1895.
2. ***Afjal Ansari v. State of Uttar Pradesh*** (2024) 2 SCC 187.
3. ***State of T.N. v. Jaganathan*** (1996) 5 SCC 329.

4. *Lok Prahari through its General Secretary, S. N. Shukla v. Election Commission of India and others* (2018) 18 SCC 114.

6. Per contra, learned APP, while opposing, pointed out that along with other offences, applicant is also convicted for offence under Section 307 IPC i.e. attempt to commit murder. That, appeal has been preferred and even sentence has been suspended. Therefore, learned APP submits that, there is no further need for staying conviction. He emphasized that no case is made out on merits to stay conviction and that, mere communication from employer department itself would not entitle applicant to seek such relief.

7. After hearing both sides and on going through the papers, it seems that present applicant, who is a Government servant, has been chargesheeted for offence under Sections 307, 324, 323, 504, 506, 427, 201 r/w 149 of IPC, Section 4/25 of the Arms Act and Section 37(1)(3)/135 of the Maharashtra Police Act. Apparently, he is shown to be accused no.1. This Court need not dwell on the merits of the conviction as already appeal has been preferred and the same is pending before this Court. Further, there is no dispute that after preferring appeal, his prayers for suspension of sentence and grant of bail are also considered by this Court by order dated 17.04.2023.

8. The moot question that crops up is, when he is already on bail and sentence has been suspended pending appeal, whether case at all has been made out for further relief of stay to the very conviction recorded against him.

9. Learned counsel invited attention of this Court to the above referred rulings and has submitted that there is no dispute that only in rare and exceptional cases, higher courts are inclined to stay very conviction. However, according him, case of applicant also falls in such category as, now his employer department is about to terminate his service which is his very source of livelihood as well as only source of income for entire family. That, he has been given only 10 days time to make representation and submit say against proposed action. He pointed out that it is very drastic step which his department is about to take and if conviction is not stayed, he would be subjected to great injustice and loss, more particularly in view of pendency of appeal before this Court in which his guilt and innocence is yet to be tested. Therefore, he prays to invoke powers under Section 389 (1) of Cr.P.C. and to stay the conviction.

10. This Court has considered all above rulings wherein law 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. Law to that extent has been elaborately discussed in the cases of *Navjot Singh Sidhu v. State of Punjab* (2007) 2 SCC 574 ; *Ravikant S. Patil v. Sarvabhoutma 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. More particularly, emphasis is laid by learned counsel for the applicant on the decision of this Court in *Chanda Ram Shivsharan* (supra).

11. In the light of above settled legal position on the point of entitlement of stay to the very conviction, if facts in the case in hand are seen, it seems that recently applicant is in receipt of communication (Exhibit C-1) from his department which, though is undated, is apparently issued in this month and the translated version of communication is as under:

“Read :-

- 1) The decision in Sessions Case No. 336/2016 dt. 29/03/2023 by the Hon'ble Additional Sessions Judge, Ahmednagar.
 - 2) See rule no. 4.6 of Departmental Inquiry Manual Fourth Edition.
 - 3) Government Circular No. VSA-1315/C.No.27/11 dt. 14/09/2015.
 - 4) No. Esstt.-1/Personal Nimase/Desk 485/2023, Ahmednagar dt. 10/01/2024 by the District Superintendent Land Records, Ahmednagar E-1288002.
 - 5) Ot. No. DGP/PP/672/2024, Nashik dt. 28/02/2024 by the District Public Prosecutor, Nashik.
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Esstt. No.-1/Dismiss-Memorandum/Personal Shri. Nimase/2014

Nashik. Date : /03/2014

Memorandum:

Shri. Kanifnath Pandarinath Nimase, the then Surveyor, Deputy Superintendent, Land Records, Shevgaon, at present Surveyor, Deputy Superintendent, Land Records, Ahmednagar is hereby informed that,

The judgment in the Court Case No.0336/2016 that was registered in Hon'ble Court in relation with Cr. Reg. No. 188/2015, u/s 307, 143, 147, 148, 149 of IPC registered with Nagar taluka Police Station, Ahmednagar against Shri. Kanifnath Pandarinath Nimase, the then Surveyor, Deputy Superintendent, Land Records, Shevgaon, at present Surveyor, Deputy Superintendent, Land Records, Ahmednagar has been delivered on dt. 29/03/2023 and Shri. Nimase has been convicted as has been found guilty in serious crime.

And whereas, the conduct of Shri. Kanifnath Pandarinath Nimase, the then Surveyor, Deputy Superintendent, Land Records, Shevgaon, at present Surveyor, Deputy Superintendent, Land Records, Ahmednagar, for which he has been found guilty, is of such a nature that, it would not be proper to allow him to be continued in the Government services further.

Therefore, by exercising the powers vested in rule no. 13(One) of The Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and as per the provisions in above read Sr. Nos. 2 and 3, the undersigned has decided to dismiss Shri. Kanifnath Pandarinath Nimase, the then Surveyor, Deputy Superintendent, Land Records, Shevgaon, at present Surveyor, Deputy Superintendent, Land Records, Ahmednagar from the Government Services. Shri Kanifnath Pandharinath Nimase, if desirous of making any representation, shall submit his written statement to this office within 10 days from receipt of the original copy of the said memorandum. It be noted that, in default of submission of the written statement within prescribed limit, further action will be taken as per rules.

Signed by
Mahesh Trimbakrao Ingle
Dy. Director, Land Records
Nashik Division, Nashik.

Copy to :

1) Shri Kanifnath Pandarinath Nimase, the then Surveyor, Deputy Superintendent, Land Records, Shevgaon, at present Surveyor, Deputy Superintendent, Land Records, Ahmednagar through (Dy. Superintendent, Land Records, Ahmednagar)

2) Respectfully submitted to the Settlement Commissioner and Director of Land Records, (Maharashtra State) Pune.

3) For information to the District Superintendent, Land Records, Ahmednagar.

4) For information and further action to Dy. Superintendent, Land Records, Ahmednagar.

2/- Original copy and office copy of the said memorandum are being sent along with this, out of which the original copy be served to Shri. Kanifnath Pandharinath Nimase and his acknowledgment with date be taken on office copy and the same be submitted immediately to this office. Similarly, the explanation by Shri. Nimase, if submitted within prescribed time, the same be submitted immediately to this office.”

12. Therefore, what can be gathered from above communication is that employer department has called upon to offer explanation/say as to why he should not be terminated. Needless to say that above communication explicitly reflects the intention of the employer department to terminate his services itself. *Prima facie* it seems that department is bent upon and has made up its mind to take drastic and extreme step to remove him from service itself. His appeal is still pending decision before this Court. On oath, statement is made in para 7 of the application that if his services are terminated and he is dismissed, not only applicant personally, but his entire family would suffer injustice. Therefore, in the considered opinion of this Court, considering the action which is proposed to be taken by the employer department, it is indeed exceptional case necessitating indulgence. Therefore, in the considered opinion of this Court, he is entitled for the relief so prayed. Hence, I pass the following order:

ORDER

- I. The application is allowed.
- II. The conviction awarded to the applicant Kanifnath s/o Pandharinath Nimse by learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 336 of 2016 on 29.03.2023, is hereby stayed till final hearing and disposal of Criminal Appeal No. 308 of 2023.
- III. The application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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