



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APPLN) NO.53/2024

Sunil s/o Late Chhatrapal Kedar

..vs..

**State of Maharashtra, through Police Officer, Police Station Ganeshpeth,
District Nagpur**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.K.Mishra, Senior Counsel assisted by Shri Ayush Sharma, Advocate for the Applicant.

Shri Siddharth Dave, Special Public Prosecutor assisted by Shri N.B.Jawade, Additional Public Prosecutor for the Non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 27/06/2024

PRONOUNCED ON : 04/07/2024

1. By this application, being moved under Section 389(2) of the Code of Criminal Procedure, the applicant/original accused No.1 (the accused) seeks stay to judgment and order of conviction and sentence dated 22.12.2023 passed by learned Additional Chief Judicial Magistrate, Nagpur in Regular Criminal Case No.147/2002.

The accused has challenged the said judgment before learned Sessions Judge at Nagpur by preferring an appeal vide Criminal Appeal No.397/2023.

The accused has filed an application, before learned

Sessions Judge at Nagpur for grant of stay to the said conviction, which has been rejected by order passed below Exhibit-4 dated 30.12.2023 by learned Additional Sessions Judge, Nagpur.

2. Heard learned Senior Counsel Shri S.K.Mishra for the accused and learned Special Public Prosecutor Shri Siddharth Dave assisted by learned Additional Public Prosecutor Shri N.B.Jawade for the State.

3. The application is filed on grounds that learned Sessions Judge, without evaluating facts of the case, passed a mechanical order and rejected the application seeking stay to the judgment and order of conviction. No prejudice would be caused to the prosecution if the instant application is allowed and the execution of the sentence imposed upon the accused has already been suspended by this court. Now, it is well settled position that suspension of sentence under Section 389(2) of the Code Act till then order of conviction still continues to be operate and, therefore, if the conviction is not stayed, the applicant would continue to render disqualification under the Representation of the People Act, 1950 (the R.P. Act). Further ground is that, if ramification of sub-section (3) of Section 8 of the R.P. Act, which is wide ranging, is not considered, it would not only affect rights of the accused to continue

in public life but also affect rights of the people, who voted for the accused to represent their constituency.

4. Learned Senior Counsel Shri S.K.Mishra, submitted that the accused is a Senior Member of the Indian National Congress and Former Cabinet Minister of the Government of Maharashtra. He was also a member of the Maharashtra Legislative Assembly. He was elected in the year 1992 as a Member of Nagpur Zilla Parishad. In the year 1995, he was first time elected as a Member of the Maharashtra Legislative Assembly and continued, till December 2023 i.e. till the date of his disqualification due to the judgment passed by learned Chief Judicial Magistrate, Nagpur. The accused is arraigned as an accused in Crime No.101/2002 on an allegation that he entered into a conspiracy with other co-accused and misappropriated funds of the Nagpur District Central Cooperative Bank Limited (the NDCC Bank) to the tune of Rs.117.51 crores under a pretext of investment made by the NDCC Bank in the Government Securities through private brokers viz. Home Trade Limited; Century Dealers, Giltage Management; Indramani Merchants, and Syndicate Management Services, who in turn have misappropriated funds of the NDCC Bank by not purchasing the Government Securities in favour of the NDCC Bank. After recording evidence adduced,

Learned Chief Judicial Magistrate convicted the accused and sentenced to suffer rigorous imprisonment for five years and to pay fine Rs.10.00 lacs for the offence punishable under Sections 409 read with 120-B of the Indian Penal Code, in default, to suffer rigorous imprisonment for one year. The accused is further convicted for the offence punishable under Sections 406 read with 120-B of the Indian Penal Code, but no separate sentence is awarded. He is also convicted for the offence punishable under Sections 468 read with 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine Rs.2.00 lacs, in default, to suffer rigorous imprisonment for six months. He is also convicted for the offence punishable under Sections 471 read with 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.50,000/-, in default, to suffer rigorous imprisonment for 3 months.

5. Learned Senior Counsel Shri S.K.Mishra, further submitted that findings recorded by this court, while suspending the sentence, show that on the basis of contrary evidence, the accused is convicted. It is well settled that stay to the conviction is to be granted in exceptional cases where situation becomes irreversible and cannot be compensated. A strong *prima facie* case is made out

by the accused. If the conviction imposed upon the accused is not stayed, he would lose his right to represent the people. There is a consistent view that whenever situation becomes irreversible, stay can be granted to the conviction. If the submission, as to suspension of sentence is accepted, stay to the conviction follows. Right of the accused is a right to represent. Not only rights of the representation would affect but also rights of the people, who voted for him to represent their constituency, would affect. There is a consistent view of the Honourable Apex Court that when situation is irreversible, stay to conviction must follow as the right of the representation would affect. It is an exception case to grant stay to the conviction. While suspending the sentence, this court considered role of the accused.

6. In support of his contentions, learned Senior Counsel Shri S.K.Mishra, placed reliance on following decisions:

1. Rama Narang vs. Ramesh Narang and ors, reported in (1995)2 SCC 513;
2. Rahul Gandhi vs. Purnesh Ishwarbhai Modi, reported in (2024)2 SCC 595;
3. Afjal Ansari vs. State of Uttar Pradesh, reported in (2024)2 SCC 187;
4. K.Ponmudi @ Deivasigamani vs. State Tamil Nadu, reported in 2024 SCC OnLine SC 600, and

5. Interim Application No.1647/2023 in Criminal Appeal No.173/2022 (Chanda Ram Shivsharan vs. The State of Maharashtra) decided by this Court on 9.8.2023.

Learned Senior Counsel submitted that in all these decisions, a consistent view is taken that suspension of conviction as an exception and is not a rule. While safeguarding social interests, the court has a duty to balance interests of protecting integrity of electoral process on one hand, while also ensuring that constituents are not bereft of their rights to be represented.

7. *Per contra*, learned Special Public Prosecutor Shri Siddharth Dave submitted that consideration for suspension of sentence is different than to stay the conviction. The jurisdiction now to be exercised is different. For stay to the conviction, the accused has to make a rare exceptional case. The object behind sub-section (3) of Section 8 of the R.P. Act is to be looked into. The present application is filed without obtaining any liberty. While pressing application for suspension of execution of sentence, the applicant gave up the claim. The power is to be exercised in exceptional cases.

8. Learned Special Public Prosecutor Shri Siddharth Dave,

relied upon the decision in the case of **Rama Narang vs. Ramesh Narang and ors** *supra* wherein application is rejected even after considering object behind Section 267 of the Companies Act.

In the case of **Afjal Ansari vs. State of Uttar Pradesh** *supra*, *stay to conviction was granted considering the accused was acquitted for predicate offence*. Only ground raised by the accused, that he wants to represent the constituency, is not exceptional ground. A remedy is available with the accused to proceed with appeal and get it disposed of. As far as nature of the offence is concerned, it is alleged against the accused that he was acting as Chairman of the NDCC Bank since 1.4.1999 to 31.3.2001. The Inspection Audit of the NDCC Bank was done for the period of 4.2.2002 to 26.2.2002. During the said inspection, it is revealed that investment portfolio of the NDCC Bank was increased tremendously. Under the Chairmanship of the accused, the NDCC Bank has done various transaction of sale and purchase of physical securities from 5..2.2001 to 28.3.2001. As on 30.3.2001, physical securities to the tune of Rs.124.76 crores were due to the NDCC Bank. The said securities were not produced before the inspection team, till 28.2.2002. A detailed inspection report was sent to the NDCC Bank. The accused is responsible for illegalities and irregularities

committed while purchasing Government Securities. As role of the accused is observed, he is convicted by the court. Thus, involvement of the accused is an economic offence and no exceptional case is made out by him.

9. In support of his contentions, learned Special Public Prosecutor Shri Siddharth Dave, placed reliance on following decisions:

1. K.C.Sareen vs. CBI, Chandigarh, reported in (2001)6 SCC 584;
2. Ravikant S.Patil vs. Sarvabhooma S.Bagali, reported in (2007)1 SCC 673;
3. Navjot Singh Sidhu vs. State of Punjab and anr, reported in (2007)2 SCC 574;
4. Sanjay Dutt vs. State of Maharashtra, reported in (2009)5 SCC 787;
5. State of Maharashtra, through CBI, Anti Corruption Branch, Mumbai vs. Balakrishna Dattatrya Kumbhar, reported in (2012)12 SCC 384;
6. Lok Prahari through its General Secretary, S.N.Shukla vs. Election Commission of India and ors, reported in (2018)18 SCC 114;
7. Rama Narang vs. Ramesh Narang and ors *supra*;
8. Lily Thomas vs. Union of India and ors, reported in (2013)7 SCC 653;
9. Rahul Gandhi vs. Purnesh Ishwarbhai Modi *supra*;

10. Afjal Ansari vs. State of Uttar Pradesh *supra*, and

11. Interim Application No.1647/2023 in Criminal Appeal No.173/2022 (Chanda Ram Shivsharan vs. The State of Maharashtra).

10. Having heard learned counsel appearing for parties respectively, issue before this court is, whether the accused has made out an exceptional case showing irreversible condition for grant of stay to the conviction.

11. As per contentions of the accused, on 25.4.2002, First Information Report was registered at his behest against brokers namely, Home Trade Limited (HTL); Century Dealers, Giltage Management; Indramani Merchants, and Syndicate Management Services alleging that the NDCC Bank had invested amount Rs.125.60 crores for purchasing the government securities. The National Bank for Agriculture and Rural Development (NABARD) asked the NDCC Bank to supply original securities and, therefore, the bank requested its brokers to deliver original securities. However, they have not delivered the same and supplied only photocopies and, therefore, the applicant lodged report alleging that funds of the bank have been misappropriated and the bank is duped by its brokers to the tune of Rs.125.6 crores. Thereafter, on 29.4.2002, another First Information Report was registered at the behest of Shri Bhaurao

Aswar, the Special Auditor, Cooperative Societies, Nagpur against the applicant and six others. As per allegations, the applicant in conspiracy with the co-accused misappropriated funds of the bank to the of Rs.117.51 crores under the pretext of investment made by the bank in the government securities through private brokers namely, HTL, Century Dealers, Giltage Management, Indramani Merchants, and Syndicate Management Services and the brokers in turn have misappropriated funds of the bank by not purchasing the government securities in favour of the bank. As per allegation in the complaint, the applicant, without any approval from the board of the bank for sale and purchase of the government securities, invested the amount by transferring the same to the brokers for purchasing the government securities, but the brokers have not purchased the same and the bank did not have the original securities. Thus, the applicant, who is the Chairman of the bank, having conspiracy with the said brokers' companies and their officials and with officials of the bank, misappropriated the funds of the bank and duped the bank and acted in breach of trust while carrying out his responsibilities.

12. After filing of chargesheet, 53 witnesses were examined by the prosecution. After appreciation of evidence, learned Chief Judicial Magistrate convicted the applicant and sentenced to suffer

rigorous imprisonment as the aforesaid.

13. First limb of submissions of learned Senior Counsel Shri S.K.Mishra is that, at the time of suspension of execution of the sentence, this court has considered that allowing the conviction to operate by executing the sentence, would lead to irreparable damage and the convict cannot be compensated in any monetary terms or otherwise if he is acquitted later on. It is further considered that various issues are pointed out by learned Senior Counsel and considering parameters laid down by the Honourable Apex Court, the accused has made out a case for suspension of sentence. He submitted that after perusing the evidence and as the accused succeeded to show that he has arguable points in the appeal, the sentence was suspended. As the sentence was suspended, stay to the conviction must follow.

14. Whereas, learned Special Public Prosecutor Shri Siddharth Dave, submitted that jurisdiction, exercised by this court while suspending the sentence, is different that the jurisdiction this court would exercise. The considerations for suspension of sentence and stay to the conviction are different.

15. As far as suspension of the sentence is concerned, while

allowing the application, this court considered that the accused has arguable points in the appeal and if the sentence is executed, the same could lead to irreparable damage. Moreover, the sentence is for a limited period. While suspending the sentence, parameters laid down by the Honourable Apex Court in the case of **Omprakash Sahni vs. Jaishankar Chaudhar** (Criminal Appeal Nos.1131-1332/2023) are taken into consideration.

In the said decision, it has been observed that from perusal of Section 389 of the Code, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage, viz Sections 437, 438, and 389(1) of the Code.

It has further been held that bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the

prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the Code and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

16. In the cases of **Kiran Kumar vs. State of M.P.**, reported in (2001)9 SCC 211; **Suresh Kumar and ors vs. State (NCT of Delhi)**, reported in (2001)10 SCC 338, and **Bhagwan Rama Shinde Gosai and ors vs. State of Gujarat**, reported in (1999)4 SCC 421, it has

been considered that, “holding that when a person is convicted and sentenced to a short term imprisonment, normal rule is that when his appeal is pending, sentence should be suspended.

17. In the light of the law laid down by the Honourable Apex Court, considering the sentence is of limited period, the same was suspended.

18. Admittedly, while considering application for stay to conviction, it is well settled that power to suspend an order of conviction, apart from order of sentence, its exercise should be limited to very exceptional cases. The court has a duty to look at all aspects including ramification of keeping such conviction in abeyance.

19. Before entering into merits of the case, it is necessary to reproduce sub-section (3) of Section 8 of the R.P.Act. and the same is reproduced below:

“A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.”

20. It is thus seen that if a person is convicted for any

offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2), he shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. Offence punishable under Section 420 of the Indian Penal Code is not covered by sub-sections (1) and (2) of Section 8 of the R.P.Act.

21. Here, the accused, who was the Chairman of the NDCC bank, came to be tried for offences under Sections 406, 409, 468, and 471 of the Indian Penal Code. Regular Criminal Case No.147/2002 ended in conviction of the accused along with other co-accused for offences as the aforesaid. The incident resulted in prosecuting the accused. As per allegations, the accused was acting as the Chairman of the NDCC Bank and during his tenure, investment portfolio of the NDCC Bank was increased tremendously. Under the Chairmanship of the accused, the accused, has done various transactions of sale and purchase of physical securities from 5.2.2001 and 28.2.2001. The said physical securities were to the tune of Rs.124.76 cores. The said securities were not produced before the inspection team. A detailed inspection report was sent to the NDCC Bank. Being the Chairman of the NDCC Bank, the accused

is responsible for the said transactions.

22. Upon a careful consideration of the judgment of the trial court, it suggests that transactions are entered by the accused by violating norms of the Reserve Bank of India and NABARD. The securities were shown to be purchased, but actually, it was not purchased and without purchasing it, the same was transferred to the private brokers. The transactions are carried out with private brokers. The accused was custodian and entrusted with the property, which is public fund and the same was misappropriated. Thus, involvement of the accused is in an economic offences.

23. In the case of **Rama Narang vs. Ramesh Narang and ors, reported in *supra***, relied by learned counsel Shri S.K.Mishra, the Honourable Apex Court, while discussing scope of Section 389 of the Code, held that Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. It is further observed that 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.

24. In the case of **Rahul Gandhi vs. Purnesh Ishwarbhai Modi** *supra*, while staying the conviction, the Honourable Apex Court reiterated principles that suspension of conviction is an exception and not a rule under. While granting stay, facts considered by the Honourable Apex Court are that the sentence for an offence punishable under Section 499 of the Indian Penal Code is simple imprisonment or fine or both. The trial court awarded maximum sentence of imprisonment of two years. No other reason had been assigned by the trial court while imposing maximum sentence of two years. It is to be noted that it is only on account of the maximum sentence of two years imposed by the trial court. The provisions of sub-section (3) of Section 8 of the R.P.Act came into play. Had the sentence been even a day lesser, the provision of sub-section (3) of Section 8 would not have been attracted. It has further been held that particularly, when an offence is non-cognizable, bailable and compoundable, the least the Trial Judge was expected to do was to give reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years. Though the Appellate Court and the High Court have spent voluminous pages while rejecting the application for stay of conviction, the reasons for maximum sentence have not even been touched in their orders.

It has further been observed that taking into consideration the aforesaid aspects and particularly that no reasons have been given by the trial court for imposing the maximum sentence which has the effect of incurring disqualification under Section 8(3) of the Act, the order of conviction needs to be stayed, pending hearing of the present appeal.

25. Thus, in absence of reasons, assigned by the appellate and trial courts, while imposing the sentence, the Honourable Apex Court has granted stay.

26. In the case of **Afjal Ansari vs. State of Uttar Pradesh** *supra*, relied by learned Senior Counsel Shri S.K.Mishra, the Honourable Apex Court observed that Upon careful consideration of the judgment of the trial court and the order passed by the High Court, it appears that, firstly, the impugned order suggests that there is no cogent evidence to establish that the appellant has been indulging in anti-social activities and crimes such as murder or ransom. Secondly, the Appellant's role in the old FIR, which stood as the singular reference point in the gang chart in the New FIR, had already resulted in his acquittal. Thirdly, the impugned judgment also indicates the absence of corroborative evidence supporting the contention that the Appellant had been responsible for influencing

witnesses in retracting their statements. Lastly, the High Court in its impugned order has meticulously highlighted that in the various FIRs that had been registered against the Appellant, either he was not chargesheeted or the investigating agencies had exonerated him.

Thus, considering that there was cogent evidence showing involvement of the appellant therein in anti social activities and the appellant was already acquitted in predicate offence, the stay to the conviction was granted. While granting the stay, the Honourable Apex Court reiterated that undoubtedly, an order granting stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon facts of case. However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation.

27. Thus, the settled law is that an order of granting stay of conviction should not be a rule but an exception.

28. In the case of **K.Ponmudi @ Deivasigamani vs. State Tamil Nadu**, *supra*, relied by learned Senior Counsel Shri S.K.Mishra, facts show that the appellant therein was charged for offences

punishable under Section 13(2) read with 13 (1)(e) of the Prevention of Corruption Act. The special court passed order of acquittal. The Honourable Apex Court held that the High Court has not considered main question whether view taken by the special court was plausible view. In the above facts, the stay was granted to the conviction.

29. The ground raised by the accused is that his right of representation would affect, in view of disqualification, in the light of Section 8(3) of the R.P.Act. The purpose of the said Section is to ensure that a persons with criminal record are not to be elected to public office and this is legitimate aim in a democracy. Disqualifying a person who has been convicted of a serious offense from holding public office is in the interest of maintaining the integrity and credibility of the democratic process.

30. The Honourable Apex Court, in the case of **K.Prabhakaran and ors vs. P.Jayarajan and ors, reported in MANU/SC/0025/2005**, interpreted purpose and object of Section 8(3) of the R.P.Act. It is observed that, “sub-Section (3) in its present form was introduced in the body of the RPA by Act No.1 of 1989 w.e.f. 15.3.1989. The same Act made a few changes in the text of sub-Section (4) also. The Statement of Objects and Reasons

accompanying Bill No.128 of 1988 stated, inter alia, Section 8 of the Representation of the People Act, 1951 deals with disqualification on the ground of conviction for certain offences. It is proposed to include more offences in this section so as to prevent persons having criminal record enter into public life". The intention of Parliament is writ large; it is to widen the arena of Section 8 in the interest of purity and probity in public life. The purpose of enacting disqualification under Section 8(3) of the RPA is to prevent criminalization of politics. Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics, and the House a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election. Thus, Section 8 seeks to promote freedom and fairness at elections, as also law and order being maintained while the elections are being held. The provision has to be so meaningfully construed as to effectively prevent the mischief sought to be prevented. The expression "a person convicted of any offence" has to be construed as all offences of which a person has been charged and held guilty at one trial. The applicability of the

expression "sentenced to imprisonment for not less than 2 years" would be decided by calculating the total term of imprisonment for which the person has been sentenced.

31. In the case of **Manoj Narula vs. Union of India, reported in (2014)9 SCC 1**, the Honourable Apex Court observed that the scheme of disqualification upon conviction laid down by the 1951 Act clearly upholds the principle that a person who has been convicted for certain categories of criminal activities is unfit to be a representative of the people. Criminal activities that result in disqualification are related to various spheres pertaining to the interest of the nation, common citizenry interest, communal harmony, and prevalence of good governance. It is clear that the 1951 Act lays down that the commission of serious criminal offences renders a person ineligible to contest in elections or continue as a representative of the people. Such a restriction does provide the salutary deterrent necessary to prevent criminal elements from holding public office thereby preserving the probity of representative government.

32. In the light of observations in catena of decision, purpose of Section 8(3) of the R.P.Act is to be looked into. This provision certainly deserves purposive interpretation. Just because

an accused is convicted falling under the category of Section 8(3) and he desires to contest election that by itself is not sufficient to stay the conviction mechanically.

33. The Honourable Apex Court, in the case of **Ravikant S.Patil vs. Sarvabhuma S.Bagali** *supra*, observed that, 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.

It has further been observed that 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.

34. In the case of **K.C.Sareen vs. CBI, Chandigarh** *supra*, also the Honourable Apex Court observed that the legal position, therefore, is though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.

35. In the case of **Sanjay Dutt vs. State of Maharashtra** *supra*, also, relied upon by learned Special Public Prosecutor Shri Siddharth Dave, the Honourable Apex Court held that the law prohibits any person who has been convicted of any offence and sentenced to imprisonment for not less than two years from contesting the election and such person shall be disqualified for a further period of six years since his release. In the face of such a

provision, the power of the Court under Section 389 CrPC shall be exercised only under exceptional circumstances.

36. It is thus clear that powers to suspend conviction are to be exercised with a due care and caution and that too in exceptional circumstances.

37. Here, the accused has been convicted for offences under Sections 406, 409, 468, and 471 of the Indian Penal Code. Though it is submitted that the order of conviction and sentence suffers from inconsistency of evidence of the prosecution, at this stage, the said aspect cannot be gone into. The accused is involved in the offences which are economic offences in the nature wherein public money is involved.

38. The Honourable Apex Court in the case of **State of Gujarat vs. Mohanlal Jitamalji Porwal, reported in (1987) 2 SCC 364** has held that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the

interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner with- out fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

39. The similar observations are made by the Honourable Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of **Y.S.Jagan Mohan Reddy vs. CBI, reported in (2013)7 SCC 439** laid down following parameters:

i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

40. Considering the object and purpose of Section 8(3) of the R.P.Act, merely because the accused has to represent his constituency, it could not be an exceptional circumstance for grant of stay to the conviction. An object of Legislatures in keeping away

convicts from contesting elections is to be looked into while deciding such applications.

41. In view of the discussion above, the application deserves rejection and the same is rejected.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!