



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

**CRIMINAL APPLICATION NO. 551 OF 2025
IN
CRIMINAL APPEAL NO. 399 OF 2024**

Ghungrusingh s/o Jagbirsingh Tak
Age- 38 years, Occ. Service
R/o. Balajinagar, Nanded.

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

Mr. N.S. Ghanekar, Advocate for applicant
Mrs. S.N. Deshmukh, APP for respondent-State

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**CORAM : NITIN B. SURYAWANSHI AND
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON : 30.04.2025
PRONOUNCED ON: 07.05.2025**

ORDER :

1. Applicant is convicted under Sections 307, 324, 323, 504, 506, 143, 147, 148 and 149 of Indian Penal Code by learned Additional Sessions Judge, Nanded in Sessions Case No. 15 of 2022.

2. Criminal appeal filed by applicant challenging his conviction is admitted by this Court. By order dated 07.05.2024 substantive sentence of imprisonment imposed on the applicant is suspended and he is released on bail, during the pendency of

the appeal. By this application, applicant seeks stay of his conviction recorded by the Trial Court on the ground that applicant is a police constable and he is falsely implicated in the crime and he is convicted on the basis of non substantive evidence, which is inadmissible. It is contended that on 15.05.2024 he received a show cause notice of dismissal from service issued by Superintendent of Police, Nanded. He replied the said notice, however, order of dismissal from service is issued to him on 29.01.2025. He is sole bread earner of the family and because of false conviction his entire career is at stake and if he is terminated from service he will suffer irreparable loss. Hence, he has prayed for stay of conviction.

3. Learned advocate for the applicant argued on the lines of above noted averments made in the application.

4. By relying on the written notes of arguments learned APP has opposed the application. She submitted that no exceptional circumstance is made out by the applicant to stay his conviction. She submitted that applicant is already dismissed from service and therefore there is no merit in the application and same may be dismissed.

5. Heard learned advocate for the applicant and learned APP for State at length. Perused the record.

6. Record indicates that on 21.06.2021, applicant and co-accused assaulted Sanjay Devkar and his father Sambhaji Devkar. Applicant assaulted Sanjay with sword. Due to the assault Sanjay sustained grievous injuries at his left palm till wrist joint and also sustained fracture of wrist joint. FIR was lodged by Sanjay at the hospital while receiving treatment. In the FIR specific role of assault by sword is attributed by Sanjay, to the applicant. Applicant is police constable and documents on record show that on the date of incident he was not on duty. The sword used by the applicant was seized at the instance of co-accused Kripalsingh. Applicant was absconding and was arrested on 12.10.2021. There are cross cases filed by applicant's side against Sanjay Devkar and Sambhaji Devkar, in which applicant and co-accused have not supported the prosecution and therefore they both were acquitted. In the present case also informant, his father and the eye witnesses have not supported the prosecution. However, the Trial Court on the basis of recovery of weapon, clothes at the instance of other accused, portion marked statements from the FIR, statements of injured,

which were proved in the evidence of investigating officer and the medical papers held that prosecution has proved the charge against the accused persons.

7. Law is well settled on the point of stay of conviction.

The Apex Court in ***Afjal Ansari vs. State of Uttar Pradesh***, (2024)

2 SCC 187 has held;

"It becomes manifestly evident from the plain language of the provision, that the Appellate Court is unambiguously vested with the power to suspend implementation of the sentence or the order of conviction under appeal and grant bail to the incarcerated convict, for which it is imperative to assign the reasons in writing. This Court has undertaken a comprehensive examination of this issue on multiple occasions, laying down the broad parameters to be appraised for the suspension of a conviction under Section 389(1) of the Cr.P.C. There is no gainsaying that in order to suspend the conviction of an individual, the primary factors that are to be looked into, would be the peculiar facts and circumstances of that specific case, where the failure to stay such a conviction would lead to injustice or irreversible consequences. [Ravikant S. Patil vs. Sarvabhuma S. Bagali, (2007) 1 SCC 673] The very notion of irreversible consequences is centered on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case."

8. Turing to the case in hand, it is a matter of record that applicant and co-accused are convicted in spite of the fact

that injured informant, his father and eye witnesses have turned hostile. The Trial Court has convicted applicant (accused No. 3) and co-accused (accused No. 1, 2, and 4) by relying upon evidence of other prosecution witnesses, documents proved by the prosecution comprising of FIR of PW1 Sanjay, portion marked (Exhibit-86) from the statement of Sambhaji Devkar, statement of Anil Mathpati from R.C.C. No. 10 of 2023 at Exhibit-98, respective FIR at Exhibit-111, spot panchnama, seizure panchnamas of clothes of accused No. 1 and 2 as well as informant Sanjay Devkar, PW1, memorandum disclosure statement and seizure panchnama at the instance of accused No. 1, medical evidence of Dr. Devendrasingh Paliwal, PW4, injury certificate, medical case papers of treatment of Sanjay, PW1, and arrest panchnamas of the accused.

9. It is required to be noted here that the Trial Court in its judgment has observed that accused persons including the applicant have tampered with prosecution evidence and informant, his father and eye witnesses. Accused persons even evaded framing of charge. When charge was framed and explained to the applicant and co-accused, they refused to sign the statement of their plea, though they have pleaded not guilty.

All these circumstances weigh against the applicant while considering his prayer for stay of conviction.

10. The Apex Court in ***State of Maharashtra vs. Balakrishna Dattatraya Kumbhar***, (2012) 12 SCC 384 has held;

"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 are 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."

11. In ***Shyam Narain Pandey v. State of U.P.***, (2014) 8 SCC 909, it is held that;

"11. In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has

rightly held that it is not a very rare and exceptional case for staying the conviction.”

12. Applicant being police constable has attempted to commit murder of PW1 Sanjay Devkar and until he is otherwise declared innocent in the appeal, the stain stands. Applying aforesaid ratio to the facts of the present case, we find that applicant has not made out any exceptional case for staying his conviction.

13. In the present case, applicant being police constable was duty bound to maintain law and order and peace. But he has taken law in his hands and inflicted grievous injuries by sword in an attempt to commit murder of Sanjay Devkar PW1. Taking into consideration the gravity of offence committed by applicant and its social impact, we are of the considered view that this is not a fit case to grant stay to the conviction of the applicant.

14. For the aforestated reasons, we find no merit in the present application, the Application is therefore dismissed.

(MANJUSHA DESHPANDE, J.)

(NITIN B. SURYAWANSHI, J.)