



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 509 OF 2026
IN
CRIMINAL APPEAL NO. 344 OF 2023

Deelip Gopalsingh Thakur
Age: 62 years, Occu.: Business,
R/o Mill-road, Nanded
Tq. & Dist. Nanded

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.S. Gangakhedkar, Advocate h/f Mr.G.S. Shete, Advocate for applicant
Ms. U.S. Bhosle, A.P.P. for respondent – State
....

CORAM : RAJNISH R. VYAS, J.
DATE : 24th FEBRUARY, 2026

PER COURT :

. Heard.

2. This is an application for stay of conviction. The applicant / accused Deelip Thakur is praying for staying his conviction awarded vide order dated 11th April, 2023 in Sessions Case No. 358 of 2019 by the Additional Sessions Judge-1, Nanded. The present applicant was shown as Accused No.3 in Sessions Case No. 358 of 2019, who along with other accused was convicted for commission of offence punishable under Sections 143, 147, 148, 149, 332, 336, 341, 353 and 427 of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and under

Section 3 of Prevention of Damage to the Public Property Act, 1984 (hereinafter referred to as 'Act of 1984'). All the 19 accused, who were tried by the Sessions Court, were convicted for the aforesaid offences as under :-

Section	Sentence	Fine (Rs.)	In Default
148 r/w 149 IPC	R.I. for 3 years	10,000/-	R.I. for 6 months
353 r/w 149 IPC	R.I. for 2 years	50,000/-	R.I. for 6 months
332 r/w 149 IPC	R.I. for 3 years	50,000/-	R.I. for 6 months
336 r/w 149 IPC	R.I. for 3 months	250/-	R.I. for 3 days
341 r/w 149 IPC	S.I. for 1 month	500/-	S.I. for 6 days
3 of Act of 1984	R.I. for 5 years	50,000/-	R.I. for 1 year

The sentences were ordered to run concurrently. Challenging the aforesaid conviction, various appeals were preferred by the accused persons, including the appellant.

3. Heard Mr. Gangakhedkar, learned counsel for the applicant and Ms. Bhosle, learned A.P.P. for the respondent – State.

4. In order to push his prayer for grant of stay to the conviction, Mr. Gangakhedkar has invited my attention to the order dated 17th April, 2023, passed by this Court while suspending the sentence imposed. The crux of the order dated 17th April, 2023, is that since the conviction was awarded on 11th April, 2023 and the sentence imposed, copies of the judgment were not supplied to the applicant on that day, but were supplied to the other four accused. He then contended that, considering the seriousness of the lapses in complying with

the provisions of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), bail was granted and sentence was suspended.

5. Mr. Gangakhedkar further contended that his client is desirous to file his nomination for the post of 'Councillor / Nominated Councillor'. He then invited my attention to the provisions of Section 2(11) of the Maharashtra Municipal Corporation Act (hereinafter referred to as 'MMC Act'), which defines a person duly elected as a member of the Corporation, and includes a nominated Councillor who shall not have the right, -

(i) to vote at any meeting of the Corporation and Committees of the Corporation; and

(ii) to get elected as a Mayor of the Corporation or a Chairperson of any of the Committees of the Corporation;

According to this definition, a Councillor includes the Nominated Councillor also.

6. Section 5 of the MMC Act was also relied upon by Mr. Gangakhedkar in order to apprise the Court about the constitution of the Corporation, which consists of various councillors. A specific attention was drawn to Section 5(2)(b) of the MMC Act, which says that a number of nominated councillors not exceeding five, having special knowledge or experience in Municipal Administration, are to be nominated by the Corporation in such manner as may be prescribed. According to him, the population of the Corporation, i.e. Nanded-

Waghala Municipal Corporation, would decide the question of the number of councillors.

7. Section 10 of the MMC Act was also taken recourse to, which speaks about the qualification for being a councillor. He then argued that in view of clause (a) of sub-section (1) of Section 10, a person shall be disqualified for being elected and for being a councillor if such a person has been convicted by a Court in India of any offence involving moral turpitude, unless a period of six years has elapsed since the date of such conviction. He then contended that since the offences for which he was convicted would be an offence of moral turpitude, he would in fact be disqualified for being appointed as a councillor.

8. He also invited my attention to the Maharashtra Municipal Corporation (Qualification and Appointment of Nominated Councillors) Rules, 2012, more particularly Rule 4, which prescribes the qualification for nomination. The said rule says that -

*“A person shall be eligible for being nominated as a candidate for the office of the nominated Councillors if he has special knowledge or experience in municipal administration and he, -
(g) has experience of not less than five years as an office bearer of a Non-Government Organisation registered under the Bombay Public Trusts Act, 1950, engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.”*

9. According to him, the applicant is duly qualified to be nominated as Councillor as he had made a specific averment in his application, more particularly in paragraph no.12, that the applicant is very well indulged in business as well as social services since last twenty years and being a social activist, he is connected with the Nanded-Waghala Municipal Corporation.

10. Mr. Gangakhedkar invited my attention to the testimony of the witnesses, more particularly PW 9 and 10, and stated that applicant's presence at the spot of the incident on the date of the incident is highly doubtful. It is only PW 9, who has identified the applicant in the Court in the dock. The incident, according to him, had taken place in the year 2008, whereas the evidence of PWs 9 and 10 was recorded in 2022. Thus, he submits that the dock identification is highly doubtful. He, in the aforesaid background, has submitted that he has a good chance to succeed in the appeal, and therefore, this is a fit case where a stay of conviction is required to be granted.

11. Per Contra, learned A.P.P. submitted that the pleadings made in the application failed to give any detail, and therefore, it is very difficult to say that the applicant has made out any case for stay of conviction. She contended that the provisions of the Act and Rules relied upon by the learned counsel for the applicant need to be tested and weighed in the background of the pleadings made. Her primary contention is regarding the pleadings in the application for a stay of conviction.

12. She further contended that on the day of the incident, i.e. 7th June 2018, when the informant bus driver was proceeding from Latur to Nanded from the bus depot at 6:45 a.m. to ply the MSRTC bus bearing registration no. MH 20 D 8827 and reached Hingoli Gate, Nanded at 9:45 a.m., he noticed that the bus of APSRTC bearing registration no. AP 28 Z 2316 was standing in front of his bus on the road, and the driver, conductor and passengers therefrom were alighting from the said bus and running away. In the meanwhile, the activists of the political party, who were standing on road, started giving slogans and pelting stones on the bus. Therefore, the informant had asked passengers from his bus to get out of the bus, and while he, the bus conductor and passengers were alighting from the bus, 20-25 activists of the political party, armed with stones, sticks, iron rods, etc., with the unlawful assembly, damaged the ST bus and other buses.

13. She submitted that not only the buses were damaged, but also police van. The mob was led by the MLA and her son; and the applicant was also one of the followers. She thus contended that the offence was of a serious nature and moral turpitude. She then contended that, though there were passengers in the bus and though the applicant was a follower of the political party, which was formed with an intention to participate in democracy, the act of a person belonging to the political party in damaging the public property is nothing but an immoral act. She further submitted that it was a deliberate act of damaging

public property, and therefore, the application of the accused for a stay of conviction is liable to be rejected.

14. With the help of both the counsels, I have gone through the respective proceedings and have pondered over the arguments advanced at length.

15. At this stage, it is necessary to mention here that there is no specific provision in the Code of Criminal Procedure for staying of conviction, but the recourse can be taken to Section 389 of the Code of Criminal Procedure. The parameters for suspension of sentence and stay of conviction are totally different. It is only under exceptional cases the stay of conviction is required to be granted.

16. What is required to be seen while considering the application for stay of conviction is whether the entire material is brought to the notice of the Court and whether it is pointed out that what specific consequences would flow if the stay of conviction is not granted. Even the material in support of it is also required to be produced on record.

17. In the case in hand, though it is the contention of learned counsel for the applicant that he wishes to participate in getting nominated as a member of Nanded-Waghala Municipal Corporation, the application reveals that no specific pleading is made. Paragraph Nos. 1 to 6 of the application speak about

registration of F.I.R., consequently filing of bail application, and terming the judgment impugned as illegal and improper. The grounds which are at Sr. Nos. 7 to 11, challenge the judgment of the trial court on various grounds. Paragraph No.9 of the application states that the applicant has every hope to get success in the criminal appeal and judgement is likely to be get quashed. Paragraph No.10 speaks about depositing the fine amount. Paragraph No.12 is the only pleading which can be said to be relevant, and it is reproduced as under -

“12. Since the applicant is very well indulged in business as well as social services since last 20 years. Being a social activist, he is likely to be a co-opt member in the Nanded Waghala Municipal Corporation. If the sentence is not stayed it will cause prejudice to the applicant as well as society at large.”

18. Thus what is stated is since the applicant has very well indulged in business as well as in social services since last 20 years, being a social activist he is likely to be elected as member in Nanded-Waghala Municipal Corporation. If the sentence is not stayed it will cause prejudice to the applicant as well as society at large.

19. If in the aforesaid background, arguments of the respective counsels are tested, then it is crystal clear that absolutely no material is brought on record to show that when the process of electing the member of the municipal corporation is going to be held, what the dates are or how the present applicant would be entitled to be nominated as a member. The pleadings are totally silent regarding whether the applicant has any criminal antecedents.

20. At this stage, the fairness shown by Mr. Gangakhedkar is required to be appreciated since he has stated that the two criminal cases are registered against the applicant, but same are arising out of political rivalry.

21. I have already discussed that for deciding an application for a stay of conviction, the case will have to be made out by the concerned party on the basis of a pleading and by producing relevant material on record. In this case, the same is not done.

22. Just because the sentence is suspended, it does not mean that the applicant has a good case for a stay of conviction. As far as the merit of the case is concerned, suffice it to say that since the foundational facts/pleadings are missing in the application for stay of conviction, further discussion about the merits of the case would not be relevant. Still, it can be said that PW 10 has identified the applicant as a person who was involved in the commission of a crime. The question whether dock identification is permissible or not can be decided once the appeal is taken for final hearing.

23. Learned A.P.P. then invited my attention to the law laid down by this Court in the case of *Sunil Chhatrapal Kedar Vs. State of Maharashtra* reported in *AIR Online 2024 BOM 1052*, more particularly paragraph numbers 34 and 35, which read as under-

“34. In the case of K.C.Sareen v. CBI, Chandigarh, (2001) 6 SCC 584, also the Hon'ble 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 challenging 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 v. State of Maharashtra, (2009) 5 SCC 787, also, relied upon by learned Special Public Prosecutor Shri Siddharth Dave, the Hon'ble 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 Cr.PC. shall be exercised only under exceptional circumstances.”

24. In the light of the aforesaid discussion and law laid down by this Court as well as the Apex Court, suffice it to say that no exceptional case is made out and foundation in the form of pleadings is missing. In that view of the matter, criminal application is liable to be rejected. Accordingly, same is rejected.

(RAJNISH R. VYAS, J.)

SSD