



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 545 OF 2026
IN
CRIMINAL APPEAL NO. 964 OF 2025

Santosh Baburao Gaikwad

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.J. Salunke, Advocate for applicant
Mr. V.K. Kotecha, A.P.P. for respondent – State
....

CORAM : RAJNISH R. VYAS, J.
DATE : 26th FEBRUARY, 2026

PER COURT :

. This is an application for a stay of conviction preferred by the original Accused No. 1. This Court has already admitted the appeal filed by the applicant, and suspended the sentence .

2. Two accused were tried before the Special Court, Omerga, constituted under the Prevention of Corruption Act (hereinafter referred to as 'the Act') and were convicted on 03rd December, 2025, for the commission of offences punishable under Sections 7 and 13(1)(d) of the Act. The maximum sentence imposed upon the present applicant is three years, with a total fine of Rs. 5,000/-.

3. Learned counsel for the applicant has contended that at the relevant time, the applicant was working on the post of Assistant Police Inspector and throughout the trial, he was discharging his duties at Lohara Police Station. On 03rd December, 2025, a communication was issued by the the Special Director General of Police (Administration), State of Maharashtra, indicating that the present applicant is in the zone of consideration for promotion to the post of Deputy Superintendent of Police/Assistant Commissioner of Police. He invited my attention to the said communication, more particularly Sr. No. 141, and stated that the name of the applicant appears in the list of candidates who are in the zone of consideration for promotion. He then also brought my attention to the communication dated 18th December, 2025, which is the show cause notice issued by the Director General of Police, Maharashtra State, Mumbai, to explain as to why he should not be removed from service as he is convicted for the commission of the offence as stated above.

4. According to learned counsel for the applicant, if the conviction is not stayed, the applicant will not only lose the service benefits, i.e. promotion, but also his service. He submitted that his entire service record is clean and unblemished, except for the present offence in question, in which he was falsely implicated.

5. Learned counsel for the applicant further submitted that if the evidence is perused, it would be crystal clear that he has a very good case on

merit, since even according to the case of prosecution, the amount was accepted by Accused No.2 and not by the present applicant. He further submitted that the star witness, i.e., the complainant, has turned hostile, and therefore, a case of prosecution has become fragile. According to him, the investigating officer, in his cross-examination, has admitted that, at the relevant time, the complaint was pending with Accused No.2; therefore, it cannot be said that, at the time of the alleged incident, work was pending with the applicant.

6. He further submitted that even the shadow witness has stated that the amount was accepted by Accused No.2 and not by the present applicant. According to him, if all these lacunas are taken into consideration, the applicant has an exceptionally good case on merits, and there is a high possibility of his acquittal. He thus prays that the stay of conviction be granted, else the applicant would suffer irreparable loss. According to him, an exceptional case is made out that requires interference by this Court.

7. Per contra, learned A.P.P. has contended that just because the complainant has turned hostile, it does not mean that the case of prosecution is to be disbelieved. He relies upon the judgment of the Hon'ble Apex Court, in case of *Neeraj Dutt Vs. State (Government of NCT of Delhi) 2023(4) SCC 731* in which it is stated that the offence under the Prevention of Corruption Act can also be decided based on circumstantial evidence and the fact that the

complainant turned hostile is not of vital importance. What is required to be seen is the entire prosecution case.

8. He submits that, in a criminal case, though suspension of sentence is the rule, a stay of conviction is an exception. He submitted that no case is made out by the applicant/accused that requires interference by this Court.

9. Heard respective counsels. Perused the record and the judgments cited. The record shows that the applicant, along with the co-accused, was convicted of the offence stated above. His sentence is suspended, given that the sentence imposed upon him was a fixed term, i.e. three years. At this stage, it is necessary to mention that there is a difference between suspension of sentence and a stay of conviction. Just because the sentence is suspended, it cannot be said that, as a matter of right, a stay of conviction is required to be granted. The parameters for granting a stay of conviction are totally different. What is required to be seen is whether an exceptional case is made out for granting a stay of conviction. In the case in hand, it cannot be said that exceptional ground is made out since though the informant has turned hostile, fact remains that by way of circumstantial evidence/inferential evidence, guilt of the accused is proved beyond the reasonable doubt.

10. At this juncture it is necessary to take into consideration the law laid down by Hon'ble Apex Court in case of *K.C. Sareen Vs. CBI, Chandigarh* reported

in ***AIR 2001 SC 3320***, more particularly paragraph no.12, which is reproduced as under:-

“12. The above policy can be considered necessary for the proper functioning and efficacy of public offices. If so, the legal position can be laid down that when a public servant is convicted of a corruption charge, the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal, even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction despite keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.”

11. The law laid down by the Hon’ble Apex Court in the case of ***CBI, New Delhi Vs. M.N. Sharma*** reported in ***AIR 2009 SC 1185***, so also order dated 19th June, 2025, passed in Special Leave Petition (Criminal) No. 4666 of 2025 decided by the Hon’ble Apex Court, is also required to be considered. The gist of the aforesaid two decisions is that, in the matter of the corruption, a stay of conviction is not required to be granted. The judicial pronouncement of the Hon’ble Apex Court is crystal clear that corruption is nothing but a cancer spreading in society; therefore, a stay of conviction is not required to be granted.

12. It cannot be ignored that the applicant, along with the co-accused, is convicted of the commission of an offence under the Prevention of Corruption Act. The applicant, as a public servant, must perform his duties honestly and if stay of conviction is granted, it is the public interest that would suffer. Further, it

would impair the morale of the other persons manning such an office and, consequently, erode the already-shrunken confidence of the people in such public institutions. The Hon'ble Apex Court's dictum in the aforesaid judgment gives a guiding principle. After considering the same, it cannot be said that an exceptional case is made out. Just because the applicant is due for promotion or likely to be removed from service is no ground for a stay of conviction. A show cause notice issued to the applicant can be replied by the applicant by raising such grounds as may be available in the law.

13. In that view of the matter, no case is made out to grant a stay to the conviction of the applicant.

Hence, the criminal application is rejected.

(RAJNISH R. VYAS, J.)

SSD