

2024:BHC-AUG:26216-DB



CriAppln-3293-24+

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 3293 OF 2024**  
IN  
**CRIMINAL APPEAL NO. 343 OF 2023**

1. Mahesh s/o Prakash Khedkar,  
Age: 33 years, Occ. Agri/Social Work,
2. Anusayabai w/o Prakash Khedkar,  
Age: 58 years, Occ. Social Work/Agri.

Both R/o Waman Nagar, Nanded,  
Tq. & Dist. Nanded. ... Applicants

Versus

1. The State of Maharashtra  
Through Police Station Officer,  
Vazirabad Police Station,  
Nanded, Tq. & Dist. Nanded.
2. Maharashtra State Road Transport  
Corporation, Through its Divisional  
Controller, Nanded.
3. Andhra Pradesh/Telangana State Road  
Transport Corporation through its  
Depot Manager, Hyderabad.
4. Mohd. Salim Mohd. Yasin,  
Age: 74 years, Occ. Pensioner,  
R/o Dargah Road, Parbhani,  
Tq. & Dist. Parbhani
5. Manisha Sanjay Pawar,  
Age: 44 years, Occ. Service,  
R/o Third Floor, Administrative Building-2,  
Superintendent of Police, PCR,  
Nagpur, Tq. & Dist. Nagpur. ... Respondents

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Mr. R. R. Karpe h/f Mr. Shailendra S. Gangakhedkar, Advocate for the Applicants.

Mr. N. B. Patil, APP for Respondent-State.

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**WITH**  
**CRIMINAL APPLICATION NO. 4361 OF 2024**  
**IN**  
**CRIMINAL APPEAL NO. 345 OF 2023**

Narhari Tukaram Wagh

Age 65 years, Occ: Agri/Social Activist,

R/o: At Naleshwar, Post Dhoki,

Tq. & Dist. Nanded

... Applicant  
[orig accused]

Versus

The State of Maharashtra

[At the instance of Vazirabad Police  
Station, Dist. Nanded]

... Respondent

.....

Mr. Abhaysinh K. Bhosle, Advocate for the Applicant.

Mr. N. B. Patil, APP for Respondent-State.

.....

**WITH**  
**CRIMINAL APPLICATION NO. 4364 OF 2024**  
**IN**  
**CRIMINAL APPEAL NO. 345 OF 2023**

Datta Bhujaji Kokate

Age 51 years, Occ: Agri/Social Activist,

R/o: 1-23-336, Near Airport, Sangvi (Bk),

Taroda Bk., Nanded.

... Applicant  
[orig accused]

Versus

The State of Maharashtra

[At the instance of Vazirabad Police  
Station, Dist. Nanded]

... Respondent

.....

Mr. Abhaysinh K. Bhosle, Advocate for the Applicant.  
Mr. N. B. Patil, APP for Respondent-State.

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 22.10.2024

Pronounced on : 24.10.2024

**ORDER :**

1. Powers of this appellate court under Section 389 of Cr.P.C. for relief of stay to conviction are invoked herein. All above applicants are convicts in Sessions Case No. 358 of 2019 rendered by learned Additional Sessions Judge-1, Nanded recording guilt for offence punishable under Sections 143, 147, 148, 353, 332, 336, 341, 427 of IPC and Section 3 of the Prevention of Damage to the Public Property Act, 1984.

2. They have already preferred respective appeals bearing Criminal Appeal Nos. 343 and 345 of 2023 respectively, thereby taking exception to above judgment and order of conviction. At this stage, applications are pressed into service for relief of stay to the conviction dated 11.04.2023 passed in Sessions Case No. 358 of 2019.

3. Learned counsel Mr. Karpe, representing the applicants would submit that the appeals are admitted and moreover, on their

application, their conviction is suspended as well as their bail is considered by this appellate court by order dated 17.04.2023. He pointed out that applicants/original accused nos. 1 and 2 i.e. Anusayabai and Mahesh are mother and son respectively. They both are public figures doing social work and are prominent figures of a political party. According to him, due to conviction rendered by learned trial Judge, they both have incurred disqualification from contesting elections by virtue of Section 8(3) of the Representation of People Act, 1951. He emphasized that, off late, State Legislative Assembly Elections have been declared and notified. Both, mother and son are keen in contesting the elections. Their candidature is almost considered and finalized by political party.

4. He next submitted that conviction rendered against them by trial court is in absence of cogent, reliable and convincing evidence. He pointed out that there is absence of direct evidence regarding their involvement. Crime is registered on information of driver of State Transport Corporation. Several persons were said to be assembled to register protest and there are allegations of pelting stones, but according to learned counsel, roles are not crystallized, much less, there is any evidence of involvement of present applicants. They are virtually dragged on statements of police personnel. They were not

identified by the witnesses in either TI parade or even in court and therefore there is considerable doubt regarding their involvement and such crucial aspects are lost sight of by the learned trial Judge while appreciating the evidence of prosecution witnesses. That, judgment of conviction is already under challenge by way of appeal, but it would take long time to be heard and decided.

5. In the light of above background, learned counsel would submit that in view of upcoming Legislative Assembly Elections, both applicants, who are desirous of contesting the elections, would be deprived of their valuable right to contest and get elected. Conviction has become impediment in their political career, and hence, precisely for said reason, relief of stay to the conviction is pressed into service.

6. Learned counsel Mr. Bhosle, who has moved Criminal Application Nos. 4361 and 4364 of 2024, would submit that applicant Narhari is a social worker and is affiliated to political party since long. He boasts senior posts and has good political career and he is also desirous of contesting ensuing State Assembly Elections as well as elections of District Council (Zilla Parishad). However, because of the conviction, he is unable to fulfill his aspirations and ambition.

7. He further pointed out that conviction is due to erroneous appreciation of evidence; it is contrary to the evidence on record and based on inferences and surmises; trial court failed to appreciate the evidence on record with factual probabilities and has rather given weightage to the sentiments of the witnesses while reaching to the conclusion. Ground (I) is asserted by submitting that applicant is social activist and he has to look after society in regard to betterment, progress and welfare; he was also beneficiary of anticipatory bail and no TI parade was conducted for identification, and in the light of above factors, challenge has been taken to the judgment passed by trial Judge, but according to him, it would take long time to be heard and decided and now, there is urgent need of protection by way of relief as prayed as elections are already notified to which, applicant is keen in contesting.

8. As regards to applicant Datta Kokate, who preferred Criminal Application No. 4364 of 2024, it is highlighted that he too is a social activist having clean antecedents, beneficiary of bail, but being held guilty on erroneous appreciation, assumptions and presumptions and in absence of cogent and reliable evidence. Inviting attention to para 6 of the application, learned counsel put forth that, he is also desirous of contesting ensuing elections, but because of conviction, he has

incurred disqualification by virtue of Section 8(3) of the Representation of People Act, and in view of his political ambition, relief of stay to conviction is pressed into service.

9. Learned APP, by tendering affidavit, opposed the above application on the ground that upon full-fledged trial and on complete appreciation, finding convincing and cogent evidence regarding involvement of applicants, guilt has been recorded. He pointed out that relief of stay to the conviction cannot be granted mechanically. Rather, law mandates such relief to be granted only in rarest of the rare case and in exceptional case. No such case is made out by present applicants, and for all above reasons, he opposes the relief of stay to conviction.

#### LEGAL POSITION

10. Before adverting to the entitlement of present applicants for relief of stay to the conviction, it would be fruitful to give a brief account about legal precedents on the issue of entitlement of relief of stay to conviction. In number of cases, including the cases of *Navjot Singh Sidhu v. State of Punjab* (2007) 2 SCC 574 ; *Ravikant S. Patil v. Sarvabhouna S. Bagali* (2007) 1 SCC 673 ; *K. C. Sareen v. CBI* (2001) 6 SCC 584 ; *B. R. Kapur v. State of T.N.* (2001) 7 231 ;

*Shyam Narain Pandey v. State of Uttar Pradesh* (2014) 8 SCC 909, some of which are also relied by learned senior counsel herein, law to that extent has been elaborately discussed and it 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.

In *Navjot Singh Sidhu* (supra), the Hon'ble Apex Court has held as under:

*“Section 389(1) CrPC confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. Thus an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.”*



In ***Rama Narang v. Ramesh Narang*** (1995) 2 SCC 513, which is also referred in ***Navjot Singh Sidhu*** (supra), the three-Judge Bench of the Hon'ble Apex Court held in para 19 as under

*“19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, 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, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are,*

*therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the appellate court. But while granting a stay of suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.”*

In ***Lok Prahari through its General Secretary v. Election Commission of India and others*** (2018) 18 SCC 114, the Hon'ble Apex Court has held that the power of the appellate court under Section 389 Cr.P.C. includes the power, in an appropriate case, to stay the

conviction. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice.

In *Ravikant S. Patil v. Sarvabhuma S. Bagali* (2007) 1 SCC 673 also, similar views are echoed in para 15 which reads as under:

*“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.”*

11. Thus, the ratio that is culled out from above quoted judicial pronouncements, it is implicit that relief of stay to conviction is permissible **only in rarest of rare case**. That, power to stay conviction is by way of an exception. Before such power is exercised, the appellate court must be convinced and made aware of the consequences which would ensue if conviction are not stayed. In short, it has to be demonstrated that, if relief of stay is not granted, applicant would suffer such irreparable loss that cannot be made up and situation cannot be reversed.

12. Keeping above judicial precedent in mind, case put forth for relief of stay is examined with care and caution. What is thereupon emerging is that, fundamental ground for relief is that the applicants are desirous of contesting the elections to the State Legislative Assembly, however, due to conviction recorded by learned trial court, they would be deprived of the statutory right of contesting election.

Both applicants mother and son (Criminal Application No. 3293 of 2024) are arraigned as accused nos. 1 and 2 in Sessions Case No. 358 of 2016. Precise charge is that on 07.06.2008, Maharashtra State Transport bus bearing D8827 was obstructed by 20 to 25 political activists who were said to be armed with stones, sticks, wooden poles, iron rod etc. Damage was caused to bus as well as vehicle of Municipal Corporation and according to informant, the aggressive activists were led by present applicants. Some police personnel are also reported to be injured.

13. As is the settled position, powers to stay are to be exercised by the appellate court only with complete circumspection and only in exceptional and rarest of the rare case. It needs to be noted that though right to elect has been asserted, the Hon'ble Apex Court, in the case of *Jyoti Basu and others v. Debi Ghosal and others* MANU/SC/0144/1982, in para 9, observed as under :

*“9. Right to elect, fundamental though it is to democracy, is, anomalously enough, (emphasis laid) neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be*

*elected. So is the right to dispute an election. Outside of the statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore subjective statutory limitations.”*

Likewise, recently also, the Hon'ble Apex Court reiterated and echoed similar view in the case of ***Vishwanath Pratap Singh v. Election Commission of India and another*** 2022 LiveLaw (SC) 758, wherein reference was made to another judgment in the case of ***Javed v. State of Haryana*** (2003) 8 SCC 369, holding that right to contest election is neither a fundamental right nor a common law right.

14. Therefore, the above legal position settles the contention raised by the applicants that they have a right to elect.

15. Further, in the considered opinion of this Court, at this juncture, it is only the aspiration of applicants to contest election. No concrete material has been placed on record to demonstrate that they are chosen as a candidate by a particular political party to contest the election. Therefore, for such reason also, mere eventuality or likelihood of getting candidature, does not fit in the legal requirements of rarest of the rare case calling upon indulgence of

appellate court to stay the very conviction. In a way, present applications are virtually premature.

16. Above all, the legislative intent, object and purpose of incorporating Section 8(3) of the Representation of People Act cannot be lost sight of. Appellate court whose jurisdiction is invoked for granting stay to the very conviction, has to be necessarily convinced that, exceptional case does exist and that there is impending danger of consequences, which are likely to ensue, are so eminent that relief of stay to conviction is necessary. To this extent, nothing has been shown to the court so as to exercise the exceptional powers. This Court is not convinced about existence of exceptional case or case to be rarest of the rare one necessitating indulgence to stay the very conviction. None of the grounds taken recourse to and put forth in support of relief are potent or so exceptional so as to entitle applicants for relief of stay to conviction.

17. Here, both applicants along with others were held guilty for commission of offence under Sections 143, 147, 148, 353, 332, 336, 341, 427 of IPC as well as Section 3 of Prevention of Damage to the Public Property Act, 1984 and are sentenced for five years. Applicants who are politically ambitious and keen of becoming public

representative, are precisely held guilty for disrupting public transport system and damaging public property itself.

For all above reasons, as no case is made out for grant of relief as prayed, applications deserve to be rejected. Accordingly I proceed to pass following order:

**ORDER**

The applications are rejected.

**[ABHAY S. WAGHWASE, J.]**

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