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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 157/2021

SOMNATH BHARTI Petitioner

Through Mr.N. Hariharan, Sr. Adv. with
Mr.Siddharth S. Yadav,
Mr.Samarth K. Luthra, Ms.Akriti
Gupta Mittal & Mr.Prateek Bhalla,
Adv.

versus

STATE Respondent

Through Mr. Amit Chadha, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **24.03.2021**

CrI. M.A. 5171/2021

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

CrI.M.(Bail) 351/2021 & CrI.M.A. 5170/2021

3. Vide the present applications, the petitioner seeks suspension of sentence and stay of conviction dated 23.03.2021 passed by Special Judge (PC Act) (CBI)-23, Rouse Avenue District Court, New Delhi in Criminal Revision Petition No.01/2021 during the pendency of the present petition.
4. Petitioner has been convicted and sentenced to undergo SI for 15 days with fine of ₹500/- for the offences punishable under section 323 IPC read with section 149 IPC. He has been further sentenced to undergo SI for a period of 6 months with fine of ₹500/- for the offences

punishable under sections 353 IPC r/w 149 IPC. He has again been sentenced to undergo SI for one year with fine of ₹1,000/- for offence punishable under section 147 IPC r/w 149 IPC. He has been sentenced to undergo SI for two years with fine of ₹1,00,000/- for offence punishable under section 3 (1) of the Prevention to Damage of Public Property Act, 1984 and in default of payment of fine, further SI for a period of one month. All the sentences shall run concurrently.

5. Notice issued.

6. Learned APP for State accepts notice.

7. Mr.N.Hariharan, learned senior counsel appearing on behalf of the petitioner submits that petitioner is a sitting MLA of Delhi Legislative Assembly and if his conviction is not suspended, he may be disqualified as per section 8 of Representation of People's Act.

8. In a similar situation, the Hon'ble Supreme Court in the case of ***Ravikant S. Patil vs. Sarvabhuma S. Bagali: (2007) 1 SCC 673***, has held as under:

“15. 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.

16.2 In State of Tamil Nadu v. A.Jaganathan, [1996] 5 SCC 329, the State challenged the order of the High Court which had granted suspension of the conviction as also the sentence, relying on Rama Narang (supra). This Court held that the principle laid down in Ram Narang (supra) was that conviction and sentence can both be suspended only if non-grant of suspension of conviction would result in damage which could not be undone if ultimately the appeal/revision was allowed. On facts, it was found that even if stay of conviction was not granted, no prejudice would be caused to the convicted person, having regard to the fact that when the revisions against the conviction and sentences were ultimately allowed, the damage, if any, caused to the respondents therein with regard to payment of stipends etc. could well be revived and made good to the them. This Court noted that if such trifling matters involving slight disadvantage to the convicted person were to be taken into consideration, every conviction would have to be suspended pending appeal or revision. It was further noted that the High Court did not consider at all the moral conduct of the respondents inasmuch as the respondent Jaganathan who was a Police Inspector had been convicted under Sections 392, 218 and 466 IPC, while the other respondents who were also public servants had been convicted under the provision of Prevention of Corruption Act. Under those circumstances, the discretion exercised by the High Court in suspending the conviction was reversed.”

9. It is further submitted that in the aforesaid case, the suspension as well as conviction was stayed and case of the petitioner is similarly situated.

10. Moreover, learned APP for State has not disputed the fact that conviction and suspension awarded by the Trial Court was stayed by the appellate court till appeal was disposed of.

11. Keeping in view the aforesaid facts, I hereby suspend the sentence and stay the conviction till the disposal of the present petition.

12. Accordingly, he shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

13. The applications are allowed and disposed of.

14. Copy of this order be transmitted to Jail Superintendent concerned for information and necessary compliance.

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15. Notice issued.

16. Learned APP for State accepts notice.

17. Digital Trial Court Record be requisitioned.

18. On receipt of the same, Registry is directed to send e-copy of the Trial Court Record to learned counsel for the parties as per rules.

19. Renotify on 20.05.2021 for final disposal.

SURESH KUMAR KAIT, J

MARCH 24, 2021/ab