



2024:DHC:8066



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

Reserved on: 03rd September, 2024
Pronounced on: 18th October, 2024

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CRL.M.(BAIL) 725/2024 in CRL.A. 1186/2017

MADHU KODA

S/o Shri Rasika Koda,
R/o Deen Dayal Nagar, Booti Road,
Ranchi, Jharkhand

..... Petitioner

Through: Mr. Amit Kumar, Sr. Advocate with
Mr. Luv Kumar, Ms. Priyanka Parmar
& Mr. Neeraj Kumar, Advocates

versus

STATE THRU CBI

Through CBI

..... Respondent

Through: Mr. R.S. Cheema, Sr. Advocate with
Ms. Tarannum Cheema, Mr. Akshay
N, Mr. Sadeev Kang & Mr. Akash
Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.M.(BAIL) 725/2024

1. The present Application under Section 389(1) read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the Applicant seeking suspension of operation of *Order of Conviction dated 13.12.2017*.



2. The Applicant had been convicted *vide* Judgment dated 13.12.2017 and Order on Sentence dated 16.12.2017 in CC No. 79/2016 arising out of FIR RC No. 0219/2012 (E) 0012 dated 03.09.2012 for the following offence: -

(i) For the offence punishable under Section 120B of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1908"*) read with Section 13(1)(d)(ii)/13(1)(d)(iii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as "PC Act, 1988"*) to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs. 5,00,000/-, in default of payment of fine, to further undergo simple imprisonment for a period of six months,

(ii) For the offence of criminal misconduct by a public servant under Section 13(1)(d)(ii) read with Section 13(2) of PC Act, 1988, to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs. 10,00,000/-, in default of payment of fine, to further undergo simple imprisonment for a period of nine months,

(iii) For the offence of criminal misconduct by a public servant under Section 13(1)(d)(iii) read with Section 13(2) of PC Act, 1988, to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs. 10,00,000/-, in default of payment of fine, to further undergo simple imprisonment for a period of nine months,

3. The Applicant along with the Appeal filed an Application CRL.M. (Bail) 2274/2017 under Section 389(1) read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) dated 22.12.2017 seeking stay of fine during the pendency of the present Appeal,



which was allowed *vide* Order dated 22.01.2018.

4. The Applicant also filed the CRL.M.A. 2273/2017 and CRL.M.A. 38740/2019 seeking stay of operation of the impugned Judgment of conviction dated 13.12.2017 passed by the Special Judge. However, these Applications were dismissed by this Court *vide* Order dated 22.05.2020 by placing reliance on the decision in K.C. Sareen vs. CBI Chandigarh, (2001) 6 SCC 584., wherein the Apex court held that even though the Applicant had a *prima facie* case, but was not persuaded to stay the Order of Conviction.

5. The Applicant by way of present Application, has sought the stay of Order of Conviction afresh, which has been necessitated on account of change in the facts and circumstances of the case and also the law laid down by the Supreme Court in the case of Afjal Ansari vs. State of Uttar Pradesh, (2024) 2 SCC 187.

6. It is asserted that the Appeal is pending adjudication for over seven years and on account of voluminous nature of the case, the Appeal could not be heard. The Applicant has been compelled to again seek the relief of suspension of Order of Conviction after a gap of four years since the dismissal of first Application inasmuch as he is desirous of contesting Elections of 6th Jharkhand State Assembly which is likely to be held in the month of November-December, 2024 as the term of the 5th Jharkhand Legislative Assembly shall be coming to an end on 05.01.2025.

7. The Applicant is a Scheduled Tribe belonging to 'Ho' Community of Kolhan Region of Jharkhand, which is one of the most backward regions of India. The 'Ho' Community and other tribal and non-tribal Communities of the area who closely identify themselves with the Applicant, have been approaching him since he has been representing them in State Assembly and



in Parliament for more than two decades.

8. Furthermore, the 'Ho' Community of Scheduled Tribe is 10.7% of the total Scheduled Tribe population of Jharkhand, as per the Census of 2011. The Applicant has been taking up the cause of people of his region in Legislative Assembly and Parliament, from time to time. Even as on date, the wife of the Applicant is the sitting Member of Parliament from the region of Jharkhand.

9. In terms of Section 8(3) of the Representation of the People Act, 1951 (*hereinafter referred to as the "Act, 1951"*), a person is disqualified from contesting the election of Legislative Assembly and Parliament upon being convicted for an offence under Section 8(1) of the Act, 1951 for a period of six years from the date of conviction. Section 8(3) of the Act, 1951 further bars the person from contesting the election for a further period of six years since the date of his release. The period of six years is already over from the date of conviction.

10. In the present case, the Applicant was convicted *vide* Judgment dated 13.12.2017 and Order on Sentence dated 16.12.2017. The Applicant claims that he has good case on merits and irreparable loss would be caused not only to him but also to his Electorate, who have elected him to the Legislative Assembly as well as to the Parliament from time to time. The ramifications of Section 8(3) of the Act, 1951 are wide-ranging as they affect not only the right of the Applicant to continue in public life but also the right of the Electorate who have elected the Applicant to represent their constituency. He shall be deprived of his constitutional right to contest the election and discharge his duty towards the constituency. He has worked hard to save the linguistic cultural identity not only of himself but also of the



entire *Ho Community* and has also focused on their development. The Applicant is a public figure with a long-standing record and dedicated service to the State of Jharkhand and the Nation at large.

11. The Applicant began his political career as an activist with the All-Jharkhand Students' Union. In 1995, for the first time, he contested the elections from his Constituency Jagannathpur. Though he lost the elections, but he gained popularity in his Constituency and community due to his dedication towards their development.

12. The Applicant has asserted that because of his conviction *vide* Judgment dated 13.12.2017, he is unable to contest the elections for the Legislative Assembly of State of Jharkhand in 2019. While dismissing the earlier Application for stay of conviction, this Court had observed that the applicant-appellant has a *prima facie* case, but the Court was not persuaded to accept that his conviction is liable to be stayed on this ground alone.

13. It is further submitted that there are two pending cases i.e., ECIR Case No. 2/2009 and Regular CBI Case No. 5/2010 against him presently before the District and Sessions Judge, Ranchi and he has not been convicted in those cases till date. He presently stands disqualified from contesting the forthcoming elections on account of his conviction in this case.

14. The prosecution before the Trial Court has failed to establish *mens rea*, the intention which is an essential ingredient for the offence of criminal misconduct under Section 13(1)(d) of PC Act, 1988. The impugned Judgment dated 13.12.2017 of the learned Trial Court is bad in law and suffers from various inconsistencies. The only evidence the Trial Court has considered while passing the impugned Judgment dated 13.12.2017 is that the Applicant-Appellant's signature appeared on the Office Noting dated



24.07.208. It has been ignored that as the Chief Minister, he relied upon the remarks of the Ministry officers. He having merely approved the recommendations of the Secretary and the Chief Secretary, it cannot be considered sufficient for invoking Section 120B of IPC, 1860. The learned Trial Court has also relied upon hearsay evidence to establish the link between the applicant-appellant and the Director of M/s Vini Iron & Steel Udyog Ltd. The judgment of the conviction is liable to be set aside in the absence of any cogent evidence against the Applicant-Appellant.

15. The applicant-appellant has placed reliance on the decisions in Rahul Gandhi vs. Purnesh Ishwarbhai Modi & Anr., (2024) 2 SCC 595 and Dilip Ray vs. Central Bureau of Investigation, decided vide CRL.A. 533/2020 in CRL.M.A. 7631/2024, wherein the Co-ordinate Bench of this Court had stayed the conviction of the Petitioner therein in order to enable him to contest the elections.

16. Reliance has also been placed on the decision in Raj Babbar vs. State of U.P., CRL. MISC. Application No. 1/2024 on 29.03.2024, wherein the Allahabad High Court, while staying the operation of the impugned conviction, considered the candidature of the applicant therein for Parliamentary Election, which was urgent in nature.

17. It is submitted that the chances of the Appeal being heard are slim keeping in mind the heavy backlog/pendency and the delay in disposal, which is likely to cause irreparable loss to the Applicant-Appellant.

18. Therefore, it is submitted that the impugned Judgment of Conviction dated 1312.2017, may be suspended.

19. **The respondent in its Reply** has made the *preliminary submissions* that the first similar Application of the Appellant has been dismissed *vide*



Order dated 22.05.2020, in the present Appeal.

20. The limited Notice of the present Application had been issued *vide* Order dated 08.05.2024 in the following terms “*issue notice to the respondent limited to whether the petition is maintainable in view of the fact that the plea of the petitioner already stands rejected by a reasoned order of this Court*”.

21. It is further submitted that the strategy of the Appellant appears to be to question the judgment of this Court on a specious plea of change of law. This stratagem is required to be nipped in the bud and the Application be dismissed at the threshold.

22. The Reply is therefore, confined only to the question of maintainability of the present Application in terms of the Order dated 08.05.2024. While dismissing the first Application of the Appellant making a prayer for same relief, the observations made by this Court while rejecting the prayer of suspension of conviction is as under: -

“63. Clearly, if the wider opinion is that persons charged with crimes ought to be disqualified from contesting elections to public offices, it would not be apposite for this Court to stay the appellant’s conviction to overcome the disqualification incurred by him.

64. It would not be apposite to facilitate the appellant to contest elections for any public office, till he is finally acquitted.”

23. The aforesaid judgment was never challenged by the Appellant and the same has, therefore, attained finality. No new facts have arisen till date, to seek the same relief afresh.

24. The ground taken by the applicant-appellant is that there are different views taken by this Court in other cases and there have been other developments in the law as laid down by the Apex Court, but that does not



give him the right to reopen the past proceedings before the same forum. This is contrary to the principle of finality, *stare decisis*, and logic.

25. The applicant-appellant is seeking to agitate the same relief which has been denied after more than four years of the impugned Judgment dated 13.12.2017, which has attained the finality.

26. The Appellant has relied on another coal block case in Dilip Ray, (supra), wherein the conviction of the appellant has been suspended and he has been permitted to contest the elections *vide* Order dated 08.05.2024. However, this judgment in Dilip Ray, (supra) is *per incuriam* and is liable to be disregarded.

27. If the litigants are permitted to approach the very same Court for the relief which has been denied earlier, simply because another view was taken subsequently, it would be disastrous. This would shake the finality and sanctity attached to the judgments of this Court and thus, every judgment delivered by this Court would become vulnerable to challenge simply because there is a change in view of law.

28. There is no change in circumstances or in law. The applicant-appellant has not been able to establish any grounds for reviewing the Order dated 22.05.2020 *vide* which this relief had been denied to him.

29. Reliance has been placed on the decision in Public Interest Foundation & Ors. vs. Union of India, (2019) 3 SCC 224, wherein the Apex Court had observed that persons charged with corruption offences cannot be permitted to contest the elections. The judgment in Afjal Ansari (supra) on which the reliance has been placed by the Appellant, does not mark any shift in law as it only reaffirms the legal position. Moreover, the facts of the said case do not apply to the given facts of this case. The public servant therein



had incurred disqualification during his tenure as an elected representative. These are the cases where the petitioners were the elected representatives who had been disqualified during the tenure and, therefore, the exceptional circumstance arose where the Constituency go unrepresented, which is not the present case. The facts in the present case are distinguishable since the Appellant was not as an elected representative at the time of his conviction. The judgments, on which the reliance has been placed by the applicant-appellant, are totally misplaced.

30. The length of time in hearing the present Appeal is not a relevant consideration. This ground has already been considered and rejected by the earlier Order. The Appellant is estopped from raising these issues again and again and it has become barred by *res judicata*.

31. It is, therefore, submitted that the present application is without merit and is liable to be rejected.

32. **Submissions heard.**

33. The present Application posits two possibilities, both emanating from the interaction of Constitution and Criminal Procedure Code. The court needs to balance between two sets of rights; *first* is of the accused who has been convicted and his Appeal against such Conviction is currently pending, and *second* is of a former Member of Parliament who seeks to represent his constituency.

34. These pleas of the Applicant must not be construed without a backdrop. The backdrop is again at two distinct levels – *Right to represent in a constitutional democracy*, and a *greater democratic ideal of decriminalisation of Politics*. The second ideal has come to be viewed in an alternative light and as a result its effect has been watered down in the recent



judgment of Afjal Ansari (Supra) wherein the Majority weighed about the ‘*depoliticization of criminality*’.

35. There has been constant demand for decriminalisation of Politics and the same has been a matter of concern in society for long. The Supreme Court in Public Interest Foundation and Ors. vs. Union of India and Ors., (2019) 3 SCC 224 observed as under:

“2. The constitutional functionaries, who have taken the pledge to uphold the constitutional principles, are charged with responsibility to ensure that the existing political framework does not get tainted with the evil of corruption. However, despite this heavy mandate prescribed by our Constitution, our Indian democracy, which is the world’s largest democracy, has seen a steady increase in the level of criminalisation that has been creeping into the Indian polity. This unsettlingly increasing trend of criminalisation of politics, to which our country has been a witness, tends to disrupt the constitutional ethos and strikes at the very root of our democratic form of government by making our citizenry suffer at the hands of those who are nothing but a liability to our country.”

36. As noted by **Dr. B.R. Ambedkar** the “*right to represent,*” as opposed to the “*right to representation,*” is not an unlimited right but is dependent upon “*a certain social attitude of a candidate as a condition precedent to the recognition to the right to represent.*”

37. The Supreme Court in Jyoti Basu vs. Debi Ghosal, (1982) 1 SCC 691, made certain observations qua the two rights, which reads as under:

*“8. A right to elect, fundamental though it is democracy, is, anomalously enough, 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 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, subject to statutory limitations.”*

38. Further, the Supreme Court in Pradeep Kumar Sonthalia vs. Dhiraj Prasad Sahu, (2021) 6 SCC 523, observed that when interpreting Section



8(3) of the Representation of People Act, (*hereinafter referred to as the RPA*) the Court is not dealing with a Fundamental Right or a Common Law right. Later, in *Ashish Shelar vs. Maharashtra Legislative Assembly*, (2022) 12 SCC 273, the Supreme Court observed that “*the constituency cannot have any right to be represented by a disqualified or expelled member.*”

39. This “social attitude” of a candidate is legislated through the ‘Representation of People Act’ 1951. The Supreme Court in *Navjot Singh Sidhu vs. State of Punjab*, (2007) 2 SCC 574 held that the RPA is a complete Code in itself. It provides not only for the eligibility and qualification for membership of the Lok Sabha and Rajya Sabha, but also about the disqualification on conviction and other matters. It was observed that the intention of legislature can be deduced from Section 8(1) of RPA, *vide* which if any person is convicted, then he incurs disqualification for a period of 6 years. The RPA is a consequence of the Article 102(1)(e) and Article 191(1)(e) of the Constitution which provides that “*a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by the Parliament.*”

40. The RPA lays down the procedure for such disqualification. The Section 8(3) of the RPA provides that “*(A) person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.*”

41. This court in its earlier Order dated 22.05.2020, while culling out the legal position of the power of a Court to stay a conviction, relied on *Navjot*



Singh Sidhu vs. State of Punjab, (2007) 2 SCC 574, wherein the Supreme Court held as under:

“6. The legal position is, therefore, clear that an appellate Court can suspend, or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw 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.”

42. This court, in its earlier Order, while recognizing the power to stay conviction, observed that *“such power is to be exercised in exceptional circumstances”* and that it is limited to cases where this court is convinced that not staying conviction would lead to *“injustice and irreversible consequences”*.

43. Other criteria for stay of conviction was laid down by the Supreme Court in K.C. Sareen vs. CBI, Chandigarh, (2001) 6 SCC 584, wherein the court observed that when the Court is deciding an Application for stay of conviction, it must also consider the wider ramifications of the same.

44. The Applicant has sought stay of Conviction to be able to contest elections in Jharkhand scheduled to be held in November-December 2024. This ground for stay was considered and rejected by the Supreme Court in Sanjay Dutt (Supra), wherein the court observed as under:

“12. Despite all these favourable circumstances, we do not think that this is a fit case where conviction and sentence could be suspended so that the bar under Section 8(3) of the ‘RP Act’ will not operate against the petitioner. 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 CrPC shall be exercised only under exceptional circumstances.”

45. This Court while rejecting earlier Application for stay of conviction, observed that *“if the wider opinion is that persons charged with crimes ought to be disqualified from contesting elections to public offices, it would not be apposite for this Court to stay the appellant’s conviction to overcome the disqualification incurred by him.”*

46. The Applicant has presented this Application citing change in circumstances and in law. However, the consistent position of law has been of decriminalization of politics and this principle continues to hold the ground till date. The Applicant has sought to rely on the Majority view of the Supreme Court in Afjal Ansari (Supra), which was subsequently, relied upon in Dilip Ray (Supra) by a Coordinate Bench of this court.

47. However, in Afjal Ansari (Supra) the law or the principles enunciated therein are the same as earlier emphasized in the various judgements by the Apex Court, but the facts in which the conviction was stayed, was on its own merits which is distinguishable on facts of the present case. There is no change in Law, as has been asserted by the Appellant. In the case Afjal Ansari (Supra), an important consideration was that the Applicant was a sitting member of Parliament at the time of his Conviction and his consequent disqualification, created a situation of vacuum wherein a large number of people were left unrepresented in the Parliament.

48. Thus, to claim that the law has changed may not be correct; in Afjal Ansari (Supra) while applying the same principles, the conviction has been suspended on its peculiar facts and circumstances.

49. The facts as considered in Afjal Ansari (Supra), are distinguishable.



The Applicant in this case is not an elected representative, who incurred disqualification during the tenure of holding Public Office. The consequence of a sitting member may have irreversible consequences on a Constituency by being left unrepresented, and in such rare occurrence the Court would be right in exercising its power to stay the conviction in view of larger social ramifications for the people of the constituency.

50. The Appellant may seek expeditious disposal of his Appeal, which does not have the uniqueness of being voluminous, as claimed. Moreover, no new rights have got created in his favour. There is also no change in circumstances or in law, entitling a fresh look on this second Application for suspension of Conviction. The ground of participation in the upcoming elections in the State at that time was duly considered while denying the earlier Application for suspension of Conviction.

51. There is no new grounds shown to consider the present Application under S. 389(1) read with Section 482 of the Code of Criminal Procedure, 1973 afresh and is held to be not maintainable, in view of the dismissal of similar earlier Application vide Order dated 22.05.2020.

52. Accordingly, the present Application is disposed of.

53. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

(NEENA BANSAL KRISHNA)
JUDGE

OCOTBER 18, 2024

S.Sharma