

HIGH COURT OF DELHI

Bench: JUSTICE SWARANA KANTA SHARMA

Date of Decision: 08.04.2024

CRL.A. 533/2020

DILIP RAY ...APPELLANT

VERSUS

CENTRAL BUREAU OF INVESTIGATION ...RESPONDENT

Legislation and Rules:

Sections 120-B, 409, 420 of the Indian Penal Code, 1860 (IPC)

Sections 13(1)(c), 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988

Sections 389(1), 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Subject: Suspension of conviction of Dilip Ray, former Minister of State for Coal, for offenses under IPC and Prevention of Corruption Act, for enabling his participation in upcoming Odisha Legislative Assembly elections.

Headnotes:

Suspension of Conviction – Application under Section 389(1) read with Section 482 of the Code of Criminal Procedure, 1973 – Applicant seeking suspension of order of conviction dated 06.10.2020 – Applicant convicted for offences under Sections 120B/409/420 of IPC and Section 13(1)(c)/13(1)(d) of Prevention of Corruption Act, 1988 – Applicant sentenced to undergo 3 years imprisonment – Grounds for suspension of conviction – Applicant intending to contest upcoming elections of Odisha Legislative Assembly, 2024 – Applicant aged 71 years with distinguished political career spanning over 35 years – Balance of convenience – Irreversible and irreparable loss if relief not granted – Applicant’s plea supported by legal precedents – Court empowered to suspend conviction if failure to do so leads to injustice or irreversible consequences – Examination of peculiarity of facts and circumstances – Irreversible damage criteria – Applicant’s conviction if not suspended would lead to irreversible consequence – Judgment of Hon’ble Supreme Court in

Afjal Ansari v. State of Uttar Pradesh (2024) 2 SCC 187 considered – Suspension of conviction granted during pendency of appeal – Application disposed of accordingly – Order not tantamount to acquittal but suspension of conviction in peculiar circumstances including applicant’s long political career and age – Each case to be decided on its own peculiar circumstances and background.

Decision: The application seeking suspension – allowed - conviction stayed during the pendency of appeal - not amount to acquittal .

Referred Cases:

- Afjal Ansari v. State of Uttar Pradesh (2024) 2 SCC 187
- K.C. Sareen v. CBI (2001) 6 SCC 584
- Lok Prahari Vs. Election Commission of India (2018) 18 SCC 114
- K. Pommudi @ Deivasigamani v. State of Tamil Nadu Criminal Appeal No.(s) 530-531/2024

Representing Advocates:

For Appellant: Mr. Mukul Rohtagi and Mr. Pramod Kumar Dubey, Senior Advocates with Mr. Mahesh Agarwal, Mr. Ankur Saigal, Mr. Ankit Banati, Mr. Shravan Niranjana, Mr. Himanshu Bajaj and Mr. Gaurav Khanna, Mr.Keshav Sehgal, Mr.Anurag Andly and Mr.Satyam Sharma, Advocates

For Respondent: Mr. R.S. Cheema, Senior Advocate, SPP, and others

JUDGMENT

SWARANA KANTA SHARMA, J.

CRL.M.A. 7631/2024 (for suspension of order of conviction dated 06.10.2020)

1. The instant application under Section 389(1) read with Section 482 of the Code of the Criminal Procedure, 1973 (*Cr.P.C.*) has been filed on behalf of applicant/appellant seeking suspension of order of conviction dated

06.10.2020, on the ground that the present applicant has to contest upcoming elections of Odisha Legislative Assembly, 2024.

2. Brief facts of the present case are that this case pertains to allocation of 105.153 hectares of non-nationalized, abandoned coal mining area in district Giridih, Jharkhand in favour of M/s. Castron Technologies Ltd. by 14th Screening Committee, Ministry of Coal, Government of India. It was the case of the prosecution that after the allegations of corruption came to be leveled against certain public servants, an examination on the allocation of various coal blocks to private companies was started by the Central Vigilance Commission. Thereafter, the Central Vigilance Commission had made a reference to Central Bureau of Investigation after finding sufficient material. The Central Bureau of Investigation had initially conducted certain preliminary enquiries in the matter. However, when sufficient incriminating material *qua* such allocation of coal blocks came on record during the course of enquiry warranting detailed investigation, then a number of regular cases were registered including the present case against company M/s CTL, company M/s CML, their directors and also against unknown public servants and private persons for the offences under Section 120-B/420 of Indian Penal Code, 1860 (IPC), and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. Upon completion of investigation, CBI had filed a final report under Section 173 of Cr.P.C. against six accused persons including the present applicant Dilip Ray, who was the then Minister of State for Coal, for the offences under Section 120-B/420 of IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The present applicant was convicted by the learned Trial Court *vide* order dated 06.10.2020 for offence punishable under Sections 120B/409/420 of IPC and Section 13(1)(c)/13(1)(d) of Prevention of Corruption Act and was sentenced to undergo sentence of 3 years and payment of fine in Case bearing No.CBI/291/2019, arising out of FIR bearing RC No.221/2014 of 0002 dated 07.01.2014, registered with CBI, New Delhi.

3. Learned Senior counsel for the applicant argues that the applicant/appellant is seeking the relief *qua* suspension of order of conviction which was not pressed initially in view of listing of the appeal for final disposal *vide* order dated 27.10.2024. However, in view of the change in circumstances; i.e. non listing of captioned appeal for final disposal despite passage of more than three years and the impending National General Elections and Odisha State Assembly Elections wherein the applicant/appellant is aspiring to contest, the present application has been

preferred. It is argued that the applicant/appellant, presently aged 71 years, is a distinguished public figure with a long-standing record of dedicated service to the state of Odisha and the nation at large. The political journey of the applicant began in 1985 when he was elected as the chairman of the then Rourkela Notified Council, showcasing his early commitment to public service, and this continued for more than a period of 35 years wherein the applicant had held various ministerial portfolios in the Government of India and the State Government of Odisha. It is further argued that the balance of convenience also lies in favour of the applicant, and he will suffer irreversible and irreparable loss which cannot be compensated in any manner in the event he is denied the prayed relief. The learned senior counsel appearing on behalf of applicant places reliance on judgments of Hon^{ble} Apex Court in ***Afjal Ansari v. State of Uttar Pradesh (2024) 2 SCC 187***, and other pronouncements of the Hon^{ble} Apex Court on the subject. It is further stated that the applicant has clean antecedents and he has never been convicted in any other case besides the one which is the subject matter of the present appeal. It is argued that the pending appeal deals with substantial legal and factual questions that warrant careful consideration of this Court. However, it is imperative that the appellant's future not be left in limbo solely due to the existing conviction. Thus, it is argued that it would be in the interest of justice to ensure that undue harm is not inflicted on the democratic process or the rights of the electorate while the process of hearing appeal unfolds, and the applicant is thus allowed to contest the upcoming elections by suspending his conviction in the present case.

4. *Per contra*, learned Senior counsel appearing on behalf of CBI argues that the applicant by abusing his official position as Minister of State for Coal, and by breaching the trust reposed in him by virtue of his office, had misappropriated an abandoned coal mining area of Brahmadiha Coal Block, which was not in the identified list of captive coal blocks under the Coal Mines (Nationalization) Act, 1973 ('CMN Act') in favour of a private party. It is argued that the offences for which the applicant stands convicted involves moral turpitude. It is further argued that the rigors laid down by the Hon^{ble} Apex Court for suspension of conviction of a convict is that there has to be an irreversible damage, if such a conviction is not suspended, which the learned Senior counsel for the applicant has failed to demonstrate. On the contrary, allowing a convict involved in a corruption case the opportunity to re-enter public office would cause irreversible damages to the public, and the same would shatter public confidence apart from demoralizing others who hold

public offices. Learned Senior counsel argues that the same was observed by the Hon'ble Apex Court in case of ***K.C. Sareen v. CBI (2001) 6 SCC 584***. It is further argued that insofar as judicial parameters pertaining to granting stay of conviction under the Prevention of Corruption Act is concerned, Hon'ble Supreme Court has crystallized the law in the case of ***Lok Prahari Vs. Election Commission of India (2018) 18 SCC 114***. It is argued that the mere fact that the applicant is disabled from contesting elections is not an exceptional circumstance. It is submitted that there is a legal distinction between the disability to stand for elections as a result of conviction and becoming disqualified while being an elected representative for the purpose of Section 389 of Cr.P.C. It is also argued that the consideration applicable to an elected representative who incurs disqualification is different from that which applies to a person who „aspires to contest elections“. In the latter, suspension of conviction in corruption cases is untenable. Therefore, it is prayed that the present application be dismissed since it is devoid of any merit.

5. This Court has heard arguments addressed by learned senior counsel for the applicant as well as learned Senior Counsel for the CBI and has perused the material available on record.

6. The grievance of the petitioner in the present case is that he has been convicted of an offence under Section 120B/409/420 of IPC and Section 13(1)(c)/13(1)(d) of Prevention of Corruption Act by the learned Trial Court and has been sentenced to undergo imprisonment for a period of three years. The appeal, which has been preferred by the present applicant against the order of conviction is pending before this Court, and the present applicant is before this Court at this stage seeking suspension of conviction on the ground that he has to contest upcoming Odisha Assembly Elections, which are scheduled to take place in 2024 itself.

7. For the purpose of deciding the present application, which pertains to suspension of conviction on the ground of contesting of upcoming elections, this Court deems it appropriate to refer to the recent judgment of Hon'ble Supreme Court in the case of ***Afjal Ansari (supra)***. The relevant portion of the judgment reads as under:

“...15. It becomes manifestly evident from the plain language of the provision, that the appellate court is unambiguously vested with the power to suspend implementation of the sentence or the order of conviction under appeal and grant bail to the incarcerated convict, for which it is imperative to assign the reasons in writing. This Court has undertaken a comprehensive examination of this issue on multiple occasions, laying down the broad parameters to be appraised for the

suspension of a conviction under Section 389(1) CrPC. There is no gainsaying that in order to suspend the conviction of an individual, the primary factors that are to be looked into, would be the peculiar facts and circumstances of that specific case, where the failure to stay such a conviction would lead to injustice or irreversible consequences. The very notion of irreversible consequences is centred on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case.

16. Turning to the case in hand, the appellant was convicted on the basis of a gang chart that hinged solely on an old FIR, where the appellant had already been acquitted vide judgment dated 3-7-2019. Thereafter, the new FIR was registered, in which the appellant had been convicted by the trial court under Section 3(1) of the U.P. Gangsters Act. The sequence of events, beginning from the registration of the new FIR until the rejection of the appellant's plea for d suspension of conviction by the High Court, is beset with some fundamental misconceptions and, therefore deserves closer legal scrutiny.

17. Upon careful consideration of the judgment of the trial court and the order passed by the High Court, it appears to us that, firstly, the impugned order! suggests that there is no cogent evidence to establish that the appellant has been indulging in anti-social activities and crimes such as murder or ransom. Secondly, the appellant's role in the old FIR, which stood as the singular reference point in the gang chart in the new FIR, had already resulted in his acquittal. Thirdly, the impugned judgment¹ also indicates the absence of corroborative evidence supporting the contention that the appellant had been responsible for influencing witnesses in retracting their statements. Lastly, the High Court in its impugned order has meticulously highlighted that in the various FIRs that had been registered against the appellant, either he was not chargesheeted or the investigating agencies had exonerated him.

19. This Court has on several occasions opined that there is no reason to interpret Section 389(1) CrPC in a narrow manner, in the context of a stay on an order of conviction, when there are irreversible consequences. Undoubtedly, Ravikant S. Patil v. Sarvabhuma S. Bagali, holds that an order granting a stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon the facts of a case. However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation. Having applied the specific criteria outlined hereinabove to the present factual matrix, it is our considered view that the appellant's case warrants an order of stay on his award of conviction, though partially.

21. We say so primarily for the reason that the **potential ramifications of declining to suspend such a conviction are multifaceted.** On the one hand, it would deprive the Appellant's constituency of its legitimate representation in the Legislature, since a bye-election may not be held given the remainder tenure of the current

Lok Sabha. Conversely, it would also impede the Appellant's ability to represent his constituency based on the allegations, the veracity whereof is to be scrutinised on a re-appraisal of the entire evidence in the First Criminal Appeal pending before the High Court. This would potentially lead to de facto incarceration of the Appellant for a period of four years under the UP Gangsters Act and an additional six-year disqualification period, even if he is eventually acquitted, which would effectively disqualify him from contesting elections for a period of ten years.

22. It is essential to emphasize that while the Appellant did not enumerate any material facts regarding irreversible consequences in his application filed before the High Court, seeking the suspension of conviction, this principle can be traced to the statutory provisions outlined in Section 8 of the RPA. The High Court or this Court however, while exercising their Appellate jurisdictions, are well empowered to take judicial notice of these consequences. **Additionally, the Respondent also does not contest the fact that if the conviction is not stayed, the Appellant would not only face disqualification as a Member of the Eighteenth Lok Sabha but would also incur disqualification to participate in future elections for Parliamentary or State Legislative seats.** Taking into consideration the consistent legal position adopted in this regard, the severity of these outcomes underscores the urgency and gravity of the matter at hand."

(Emphasis supplied)

8. Learned Senior counsel for the applicant had argued that there is no bar under law to suspend the conviction of a person in case the circumstances of the case so require and if non grant of this relief will result in irreversible damage or prejudice being caused to the petitioner. Learned Senior counsel for the respondent on the other hand had argued that in cases under Prevention of Corruption Act, the Court should not ordinarily suspend the conviction. Both the parties have filed case law as laid down by Hon^{ble} Supreme Court.
9. After going through the same, this Court is of the opinion that in the present case, the applicant has been sentenced to undergo simple imprisonment for three years by the learned Trial Court in the year 2020. In the year 2020 itself, after going through the record, this Court had suspended the sentence awarded to the applicant after going through the entire record as is mentioned in the order dated 27.10.2020 while admitting the appeal and issuing notice to the respondents.
10. This Court has also gone through the role of the present applicant as mentioned in the impugned judgment and the reasons mentioned by the learned Trial Court for the same. This Court does not deem it appropriate to discuss the same in detail or go into the merit of the same, since that would

amount to adjudicating the merit of the case itself at this stage, which will be inappropriate. At this stage, this Court is only required to test the facts of the case on the anvil of law laid down by Hon^{ble} Apex Court to reach a conclusion as to whether in the peculiar facts and the plea raised before this Court, it will be in the interest of justice and in consonance with judicial precedents to suspend the conviction of the applicant.

11. In this regard, this Court is of the opinion that the applicant herein has a long political career. He has remained the Union Minister on several occasions as well as the State Minister in the Odisha Government. He is 71 years of age and wishes to contest elections to be held in the month of May, 2024 and serve his constituency and the country. It is not as if he has expressed his desire to do so only for the purpose of suspension of his conviction by contesting the election for the first time. He has a political career running into more than 35 years. As noted above, the elections are to be held in the year 2024, he is 71 years of age, and multiple appeals and cross-appeals have been filed in this case which will take time to be heard and are not likely to be heard and decided in the nearest future. In case, the applicant's prayer is not allowed, he will lose chance to contest election and an irreversible consequence and irreversible damage to his political career and desire to serve his constituency will be caused to him, which is a criteria laid down in the majority opinion laid down in the case of **Afjal Ansari (supra)** and followed in the case of **K. Pommudi @ Deivasigamani v. State of Tamil Nadu Criminal Appeal No.(s) 530-531/2024**.
12. This Court also notes the distinction between the facts of the case of **K.C. Sarin (supra)** and the case of **Afjal Ansari (supra)** since in the case of **K.C. Sarin (supra)**, the Hon^{ble} Apex Court had reached the conclusion that if the petitioner herein was ultimately acquitted, the damage caused to him with regard to his service can well be revived since he was a bank employee and was dismissed from his service for defrauding the bank and, thus, no irreversible damage would have been caused to the petitioner therein in case his conviction was not suspended.
13. Whereas in the case of **Afjal Ansari (supra)**, the Hon^{ble} Supreme Court had noted that the conviction, if allowed to operate, would lead to an irreparable damage to the applicant/petitioner and where such a damage cannot be compensated in any monetary terms or otherwise if he is acquitted at a later stage, that in itself carves out an exceptional situation. It is to be noted that in this case also, the petitioner Afjal Ansari had prayed for suspension of his

conviction on the ground that in case it was not suspended, he would not be able to retain his membership of Parliament and contest future elections.

Therefore, the Hon^{ble} Supreme Court had considered the issue of contesting the future elections in this case too.

14. The same ratio was followed in the recent case of ***K.Pommudi @ Deivasigamani*** (*supra*) wherein the Hon^{ble} Supreme Court had held that a case for grant of suspension of conviction was made out as irreversible situation will be created, if the conviction is not suspended, in a case where petitioner had been convicted under the provisions of Prevention of Corruption Act and had been awarded imprisonment of three years.
15. Thus, in view of the aforesaid discussion and the fact that the conviction of the present applicant if not suspended would lead to an irreversible consequence, if he is acquitted at a later stage, this court is inclined to allow the present application. In view thereof, it is directed that the conviction of the present applicant, recorded in judgment dated 06.10.2020, shall stand stayed during the pendency of present appeal.
16. Accordingly, the present application i.e. Crl.M.A. 7631/2024 is disposed of in above terms.
17. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.
18. It is clarified that this order does not amount to acquittal but is merely suspension of conviction in peculiar circumstances of the case including the long political career of the accused and his age since every case is to be decided on the basis of its peculiar circumstances and background and no two cases are similar.
19. Copy of this judgment be given *dasti* under the signatures of the Court Master to both the parties.
20. The judgment be uploaded on the website forthwith.

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