

**280 CRM-32164-2024 in
CRA-S-1189-SB-2017**

RAM KISHAN GUJJAR V/S STATE OF HARYANA

Present : Mr. Pawan Kumar, Senior Advocate,
with Mr. Madhur Panwar, Mr. Varun Hooda,
& Ms. Vidushi Kumar, Advocates,
for the applicant/appellant.

Mr. Kiran Pal Singh, AAG, Haryana.

“Those who break the law should not make the law”.

*{K. Prabhakaran Vs. P. Jayarajan, (2005) 1 Supreme Court Cases 754,
paragraph 54; (Constitution Bench Judgment)}*

(1) Present application has been filed under Section 430 of the
Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, ‘the BNSS’) for
suspension of conviction recorded by learned Additional Sessions Judge,
Ambala (hereinafter referred as ‘trial Court’) against the applicant/appellant
on 28.02.2017, in Sessions Case No.18, CIS case No.182 of 2013, CNR
No.HRAM01-001656-2010.

(2) Paper-book reveals that applicant-Ram Kishan Gujjar, along
with Ajit Aggarwal and Vijay Aggarwal @ Macky, was convicted &
sentenced vide judgment/order dated 28.02.2017/02.03.2017, respectively,
passed by learned trial Court, in the following manner:-

Conviction under Section	Sentence
306 read with 34 of the Indian Penal Code, 1860 (for short, ‘IPC’)	Rigorous Imprisonment for 04 years and fine of Rs.10,000/- with default stipulation Compensation to the tune of Rs.5,00,000/- (each) was also ordered in favour of Smt. Usha Rani (mother of deceased) under Section 357(3) of the Code of Criminal Procedure, 1973 (for short, ‘Code’).

(3) Aggrieved against the conviction & sentence, applicant preferred an appeal and which was admitted on 23.03.2017. Also transpires that sentence of imprisonment as well as compensation to the extent of Rs.3,00,000/- were stayed by the then Coordinate Bench vide order dated 10.05.2017; and the remaining amount of compensation to the tune of Rs.2,00,000/- was deposited by the applicant with learned trial Court.

(4) Learned Senior counsel contends that applicant intends to contest the ensuing elections for the Legislative Assembly of Haryana, scheduled to be held on 05.10.2024, but on account of his conviction, applicant is suffering disqualification in terms of Section 8(3) of the Representation of the People Act, 1951 (for short, 'the RP Act 1951'); thus, during pendency of the appeal, his conviction be stayed.

Also contends that during 2005-2009, the applicant remained as a Member of Legislative Assembly (MLA) from Naraingarh (Haryana) and again, elected from the same constituency in the year 2009, which he continued upto 2014. However, due to the disqualification attached in terms of Section 8(3) of the RP Act 1951, he could not contest the Assembly Election in the year 2019; and again, facing the similar predicament for 2024 Assembly Elections. Therefore, learned Senior counsel vehemently contends that in case, the conviction of applicant is not suspended/stayed, he shall suffer an irreversible loss, which cannot be compensated in any manner; rather, the same would also cause, gross injustice to the inhabitants of area.

Learned Senior counsel lastly contends that on merits also, the applicant has a very good case, in as much as, there is no cogent evidence on

record to prove his complicity; rather, findings of guilt recorded by learned trial Court are inherently based on surmises and conjectures.

In support of the above contentions, learned Senior counsel has placed reliance on the following judicial precedents:-

- (i) ***Mariano Anto Bruna Vs. Inspector of Police, 2022 AIR Supreme Court 4994***
- (ii) ***Harbans Kaur Vs. State of Punjab (P&H) (DB), 2006(3) RCR (Criminal) 897.***

(5) *Per contra*, learned State counsel, while opposing the prayer, submits that at the time of occurrence, the applicant was a sitting MLA from Naraingarh (Haryana) and while misusing his position, he created such circumstances which led to the commission of suicide by the deceased. Further submitted that applicant was specifically named in the FIR, but due to his political influence, he was declared innocent by the police during investigation. However, later on, learned trial Court summoned the applicant as an additional accused vide order dated 10.07.2010 while exercising powers under Section 319 Cr.P.C. The above summoning order was challenged by the applicant through CRR-2067-2010, but he remained unsuccessful. Ultimately, Hon'ble the Supreme Court, while allowing his SLP (Crl.) No.1698 of 2013 (vide order dated 22.03.2013), granted liberty to the prosecution for filing fresh application under Section 319 Cr.P.C. before learned trial Court. Consequently, on the basis of fresh application, again the applicant was summoned as an additional accused by learned Trial Court vide order dated 19.09.2013 and the same was also challenged by the applicant in CRR-3251-2013, but it was dismissed by the then Coordinate Bench on 29.04.2016. Finally, the applicant was tried along with Ajit

Aggarwal and Vijay Aggarwal @ Macky, and all of them were convicted & sentenced by learned trial Court on 28.02.2017.

(5.1) Learned State counsel also submitted that on an earlier occasion, the applicant made an attempt for suspension of his conviction by filing CRM-33092-2018, but the Coordinate Bench, declined the prayer vide order dated 09.09.2019, while observing that main appeal be listed for hearing on 12.09.2019.

Still further submitted that there is no material change in the circumstances for filing second application at this stage, when main appeal has already matured for final hearing; therefore, present application is liable to be dismissed, being without any basis.

Also submitted that stay of conviction is not to be ordered as a matter of course; rather there should be some exceptional circumstance(s) duly established by the convict, but in the present case, situation is entirely different.

Lastly submitted that mere wish of the applicant, to contest an election cannot be a ground to suspend his conviction; especially, when he is not interested in adjudication of the main appeal.

In support of the above submissions, learned State counsel has relied on the following case law:-

- (i) ***Rama Narang Vs. Raman Narang & others, 1995(2) SCC 515;***
- (ii) ***State of Tamil Nadu Vs. A. Jaganathan, (1996) 5 Supreme Court 329;***
- (iii) ***K.C. Sareen Vs. CBI, Chandigarh (2001) 6 Supreme Court Cases 584;***
- (iv) ***State of Maharashtra Vs. Gajanan and another, (2003) 12 Supreme Court Cases 432;***

- (v) ***Ravikant S. Patil Vs. Sarvabhouma S. Bagali, (2007) 1 Supreme Court Cases 673;***
- (vi) ***Navjot Singh Sidhu Vs. State of Punjab and another (2007) 2 Supreme Court Cases 574;***
- (vii) ***Lok Prahari Vs. Election Commission of India and others, (2018) 18 Supreme Court Cases 114;***
- (viii) ***Bibi Jagir Kaur Vs. Central Bureau of Investigation (P&H) (DB), 2017(1) RCR (Criminal) 390;***
- (ix) ***Sucha Singh Langah Vs. State of Punjab, 2017(1) RCR (Criminal) 351;***
- (x) ***Yadwinder Singh Vs. State of Punjab (P&H) (DB), 2021(4) RCR (Criminal) 722.***

(6) Heard learned counsel for the parties and perused the paper-book.

(7) As per prosecution case, the applicant/appellant, along with other co-convicts, in furtherance of common intention, instigated and abetted the victim Pankaj Khanna @ Sunny (since deceased), son of *de facto* complainant-Yashpal Khanna (now deceased), to commit suicide due to publication of some news item, thereby highlighting certain corrupt practices and his questionable conduct.

(8) As on today, the applicant is a convict under Section 306 IPC and he has been sentenced to undergo rigorous imprisonment for 04 years, along with fine of Rs.10,000/-, with default clause; plus compensation of Rs.5,00,000/- to be paid to the mother of deceased. It is noteworthy that sentence imposed upon the applicant as well as the amount of compensation, beyond Rs.2,00,000/- was stayed by the then Coordinate Bench on 10.05.2017.

(9) Present application has been filed by the applicant seeking suspension of his conviction solely on the ground that he intends to contest the forthcoming election for the Legislative Assembly of Haryana.

(10) There is no quarrel that right to contest election is neither a fundamental right; nor such a right is available under the common law; rather, it is purely a statutory right conferred under the provisions of RP Act 1951. Again not in dispute that as per the provisions of Section 8(3) of the RP Act 1951, if a person is convicted of any offence and sentenced to imprisonment for not less than 02 years, he shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of 06 years, since his release. For reference, Section 8(3) (supra) is recapitulated here as under:-

“8. Disqualification on conviction for certain offences.—

(1) -----

(2) -----

(3) *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.”*

(11) It is fairly well-settled by Hon’ble the Supreme Court that conviction can be suspended/stayed by the appellate Court in exceptional case(s) and reference in this regard can be made to Paragraph 19 of ***Rama Narang’s case (supra)***, which reads 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 (sic or) 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. .”

(12) Again, Hon’ble the Supreme Court, after following *Rama Narang*, in ***Ravikant S. Patil’s case (supra)***, 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 the 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.”

(13) Still further, Hon’ble the Supreme Court in ***Lok Prahari’s case (supra)***, while reiterating the powers of Appellate Courts for suspension of conviction, in Paragraph 16 held as under:-

“16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 CrPC, the disqualification under Section 8 will not operate. The decisions in Ravikant S. Patil and Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. 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. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of

the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. 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. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections (1), (2) and (3) of Section 8.”

(14) Concededly, on earlier occasion also, the applicant made similar attempt for stay of his conviction; but remained unsuccessful before the then coordinate bench on 09.09.2019 and order reads as under:-

“Though Mr. Cheema, learned senior counsel appearing for the petitioner, has taken me through the gist of the findings of the trial court, to submit that the applicant, other than by way of the dying declaration/suicide note, has not been connected to the offence in any manner, including by way of any FIR earlier registered against the deceased by the co-accused of the applicant, i.e. Vijay @ Macky and Ajit, and he has also argued that the learned trial court has erroneously 'reversed the onus' as regards proving the correctness of the contents of the said FIR, however, what this court at this stage, for the purpose of this application seeking suspension of conviction, cannot ignore, is that the deceased specifically named the applicant (alongwith his co-accused), in the aforesaid suicide note/dying declaration, with the “validity” of that allegation made by the deceased, to be gone into in detail at the stage of hearing of the appeal itself.

Consequently, without making any comment whatsoever on the actual merits of the appeal filed by the applicant, the present application is dismissed, with the appeal itself to be listed for hearing on 12.09.2019.”

A bare perusal of the above order clearly reveals that main appeal was ordered to be listed for hearing on 12.09.2019.

Here it is worthwhile to mention that MP/MLA cases are taken-up on priority basis by this bench i.e. at 1.45 p.m. (Daily) and records from learned trial Court have already been received in this case; thus, parties may address arguments in the main appeal as per their convenience.

(15) Although, learned Senior counsel tried to raise a plea that on merits also, the applicant has a good case; but on cursory examination of the material on record, it appears *prima facie* that findings recorded by learned trial Court are fairly convincing. Moreover, at this stage, deeper analysis/observation(s) on the merits of the pending appeal, may prejudice the case of either parties; hence, it would not be appropriate for this Court to comment any further in this regard.

(16) Above all, there is no dearth of law-abiding citizens to contest the ensuing election for the Legislative Assembly in the State of Haryana; thus, present applicant, who is a convict under Section 306 IPC and sentenced to undergo rigorous imprisonment for 04 years, would not be an indispensable person for this purpose.

(17) Even the judicial pronouncements cited by learned Senior counsel are also not helpful to the applicant, for the following reasons:-

- (i) In *Mariano Anto Bruno's case (supra)*, it was a case of acquittal on merits under Section 306 IPC; thus, cannot be of any assistance for suspension of conviction.

(ii) In *Harbans Kaur's case (supra)*, conviction of the appellant (therein), under Section 302 IPC was converted to Section 306 IPC and she was awarded sentence of 02 years along with fine of Rs.10,000/-; hence not helpful to the applicant, in any manner.

(18) In view of the above discussion, there is no ground made out; much less to say an exceptional circumstance, warranting suspension/stay of conviction imposed against the applicant; nor he is going to suffer any irreversible loss, in case, his conviction is not suspended/stayed by this Court.

(19) Consequently, there is no option, except to dismiss the application.

(20) Ordered accordingly.

(21) It is clarified that above observations be not construed as an expression of opinion on merits of the pending appeal in any manner; rather, confined only to decide the present application.

(22) As the records have already been received from learned trial Court, therefore, Registry is directed to list the main appeal for hearing in the 1st week of November, 2024.

04.09.2024

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**(MAHABIR SINGH SINDHU)
JUDGE**