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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.A. 836/2010

MEGH RAJ

.....Appellant

Through: Mr. S.S. Ahluwalia, Mr. Kapil
Choudhary, Mr. Sonu Choudhary,
Ms. Geeta Choudhary

versus

STATE

.....Respondent

Through: Mr.Aashneet Singh, APP
SI Ankur Kardam, PS Tilak Nagar

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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16.01.2025

CRL.M.(BAIL) 84/2025

1. This is an application filed under section 528 read with section 430 of the Bhartiya Nagrik Suraksha Sanhita, 2023 ("**BNSS**") read with Section 430 of BNSS seeking suspension of conviction *vide* judgment dated 04.06.2010 wherein the appellant was convicted for the offences under section 307, 452, 34 of Indian Penal Code ("**IPC**") and was sentenced to undergo 3 years rigorous imprisonment.
2. Mr Ahluwalia, learned counsel for the appellant has stated that the appellant is a social worker and has represented the constituency 3 times and also was a Counsellor when the judgment of conviction was passed.
3. He further states that the appellant is also belonging to a political



family where his father, mother, sister and his wife, all have served the constituency in some capacity or the other. Hence, the stay of the conviction of the judgment be passed as the appellant is desirous of contesting the Delhi Assembly Elections to be held on 05.02.2025.

4. He also submits that in the present case, the appeal is of the year 2010 and has not been heard so far. Due to the pendency of the appeal, the appellant has not been able to exercise his fundamental right to participate in the elections and contest the same.
5. In this regard, learned counsel for the appellant has heavily placed reliance on ***Afjal Ansari v. State of U.P., (2024) 2 SCC 187*** and more particularly on paras 4, 20, 21, 22 which read as under:-

“4. It is crucial to emphasise at this stage that the appellant has been found involved in multiple FIRs filed throughout the State of Uttar Pradesh. To provide a concise overview, a summary of these FIRs is presented below, elucidating their context and significance in relation to the ongoing proceedings:

4.1. Case Crime No. 28/1998 was registered under Section 171-F of the Penal Code, 1860 (hereinafter “IPC”) and Section 135(2) of the Representation of the People Act, 1951 (hereinafter “RPA”) on 16-2-1998, at Police Station Nonhara, District Chandauli, Uttar Pradesh, for violation of the Model Code of Conduct during the election period. The appellant has not yet been summoned by the investigating officer or the court concerned in this case.

4.2. Case Crime No. 260/2001 was registered on 9-8-2001, at Police Station Mohammadabad, Uttar Pradesh, under Sections 147, 148 and 353 IPC, and Section 3 of the Prevention of Damage to Public Property Act, 1984 along with Section 7 of the Criminal Law Amendment Act, 1932. The appellant has since been granted bail in this case.



4.3. Case Crime No. 493/2005 was registered under Sections 302, 506, 120-BIPC on 27-6-2005, at Police Station Mohammadabad, Uttar Pradesh in which the appellant was named as a conspirator. However, since the appellant was found to have played no particular role in the subject crime, his name was dropped during the early stages of the investigation and no charge-sheet was filed against him.

4.4. Case Crime No. 589/2005 was registered under Sections 147, 148, 149, 307, 302, 404 and 120-BIPC, at Police Station Bhanvar Kol, District Ghazipur, on 29-11-2005. The appellant was accused of hatching conspiracy in the said murder case. The investigation of this case was entrusted to the Central Bureau of Investigation (hereinafter "CBI") and the trial was subsequently transferred to CBI Court at Rouse Avenue, New Delhi, wherein the appellant was acquitted. CBI has filed an appeal challenging the acquittal of the appellant, but till date no adverse order has been suffered by him. Further, this is the only case mentioned in the gang chart that was prepared and relied upon in the instant case.

4.5. Crime Case No. 1051/2007 was registered under Sections 302, 120-B, 436, 427 IPC and Sections 3, 4 and 5 of the Explosives Act, 1884 and Section 7 of the Criminal Law Amendment Act, 1932. In this case, the name of the appellant was dropped after it was deduced that he had no role to play in the reported crime. The appellant was neither charge-sheeted nor summoned by the trial court concerned in this particular instance.

4.6. Case Crime No. 607/2009 under Sections 171 and 188 IPC was registered on 11-4-2009 at Police Station, Mohammadabad, Uttar Pradesh, alleging violation of the Model Code of Conduct during the election period. The appellant has admittedly not been summoned in this case.

4.7. Case Crime No. 18/2014 was registered under Sections 171-



J, 188 IPC and Section 121(2) of the RPA, at Police Station Chakarghatta, District Chandauli, Uttar Pradesh and the appellant has already been granted bail in this matter.

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20. *It remains uncontested that the foundation of the new FIR, which is the origin point of the present proceedings, rests solely on a general statement and involved the rekindling of the old FIR, in which the appellant had already been acquitted. Though the aforementioned gang chart projects the appellant as a repeat offender, the fact remains that he has not been convicted in any prior case, apart from the case presently under consideration. In this context, the detailed circumstances elaborated hereinabove, serve as compelling reasons to advocate for the suspension of the appellant's conviction and the consequent disqualification.*

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 reappraisal 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 U.P. 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 emphasise 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.

6. He also placed reliance on ***Dilip Ray v. CBI, 2024 SCC OnLine Del 2522*** and more particularly on paras 3, 6 and 8 which read as under:-

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.

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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.*

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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."

7. Lastly, he states that the Representation of the People Act, 1951 further imposes and embargo of 6 years against the appellant.
8. Hence, the order of conviction needs to be suspended to enable the appellant to contest the upcoming Delhi Assembly Elections.
9. *Per Contra*, learned APP vehemently opposes the present application at this stage. He states that the conviction should be stayed in rarest of rare cases. In the present case, besides the present conviction, there is another FIR pending against the appellant, wherein charges have been framed under section 341 and 325 of IPC.
10. I have heard learned counsels for the parties and perused the material available on record.
11. The Hon'ble Supreme Court in ***Afjal Ansari (supra)*** has observed that the appellate Court is vested with the powers to suspend the sentence or conviction for the reasons to be recorded in writing but the same would depend on facts and circumstances of that case including individual's criminal antecedents, the gravity of the offence and its wider social impact. Relevant para of the said judgment is extracted below:-

"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. [Ravikant S. Patil v. Sarvabhuma S. Bagali, (2007) 1 SCC 673, paras 15 and 16.5 : (2007) 1 SCC (Cri) 417] 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.”

12. In the present case, learned Trial Court has convicted the appellant for the offences under Section 307/452/34 of IPC based upon the testimony of the injured witnesses. The testimonies of PW1 and PW3 who are the injured witness have been quoted by the learned Trial Court in para 21 and 22 of the impugned judgment which read as under:-

21. Other witness/injured Ravinder was examined as PW-1 and he stated that :-

“..... In the meantime, Dayanand came in his car, brought swords from his house. Accused Nawab



present in the court is brother of accused Dayanand. He also had a sword. Accused Manoj and Meghraj present in Court had dandas in their hands. Accused Dayanand hit sword on my brother Sudesh Kumar. Thereafter, accused Nawab gave a sword blow and then the remaining two accused gave danda blows. I came out to save my brother, on which accused Dayanand gave a sword blow to me also. My tao Ram Gopal who had a house in the neighbourhood was enjoins sun by sitting in front of house. He came to save my brother on which someone hit dandas to him. I did not see which accused gave danda blows to him. I raised noise, on which, Sunderpal son of my chacha took me to Khetarpal Nursing Home....”

This witness also supported the testimony of PW-2 that PW-2 was hit by Dayanand, and Kunwar Nawab with swords and other two accused Manoj and Megraj gave him danda blows and when PW-1 and PW-3 came forward to rescue them, they were also attacked. PW-1 was given a sword blow by accused Dayanand and some one hit Ram Gopal with a danda.

*22. Sh. Ram Gopal was examined as PW-3 and he stated that
"..... After about 2-4 minutes, accused Dayanand and Nawab came out from their house, both were armed with swords. On reaching there, they said how they dared to object about our locking the jhuggi. Then Dayanand exhorted that he is king of the area and how*



they dared to object us and said 'marro saalo ko'. Then, accused Dayanand and Nawab armed with swords entered the house of Harpal and attacked on sudes and Harpal with swords. Ravinder who also came down from the upper floor he was also attacked with sword. I also tried to intervene and save but I was also attacked with sword as accused Dayanand exhorted that marro saale ko, ye gawahee dega, and I became unconscious.....”

13. The injured witnesses have categorically stated that the appellant was carrying *danda* in his hand and had given blows. The said testimonies formed the basis of the conviction. Relevant paras from the impugned judgment are extracted below:-

“40..... All the four witnesses are consistent that accused persons entered their house and attacked them. Photographs in this regard are also on the record, which have been proved as Ex. PW-18/16 to Ex. PW-18/30. The photographs show the veranda of the house of the accused and also inside the house of the complainant and blood is lying all over. As discussed above though, the defence is trying to make out a case of previous enmity, but there is no such evidence. There is no reason on record to show that PW-1 to PW-4 would depose falsely against the accused persons and would let off the actual culprits go scot free. There are exaggerations also in the testimony of PW-4 that PW-2 sustained 27 injuries, but in my opinion, when a person himself is being beaten indiscriminately and he saw his son being attacked with sword, such contradictions are not of much importance. Injuries on the person of PW-2 has been proved as grievous caused by blunt and sharp edged weapon, which also



supported the testimony of PW-2. PW-2 has stated that he was attacked by Dayanand Chandela as well as Kunwan Nawab with the swords and by other two accused persons with lathies. They also stated that Dayanand Chandela exhorted that "Maro salo ko" and PW-3 and PW-4 also told the same words, which according to them, were exhorted by Dayanand Chandela. PW-1 also stated that Kunwar Nawab also exhorted, but they were confronted with their statements recorded u/s 161 cr.P.c. All the four witnesses have corroborated each other on the major points besides minor contradictions, which in my opinion are not going to the root of the case. So far as nonexamination of Sufi and Deepak are concerned, in my opinion, that is not fatal to the prosecution case as they were not the eye-witnesses to the incident. so far as the non-examination of the public witnesses is concerned, police witnesses stated that no public person wanted to be involved in a dispute of two families, therefore, they do not come forward. so far as the discrepancies in the site plan is concerned, that in my opinion, though important, but on this ground only, the entire case of the prosecution cannot be thrown out. IO should have taken care to prepare the correct site plan of the scene of occurrence, which has not been done. It is well settled principle of law that negligence of IO is not fatal in every case.

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43. Keeping in view of the above discussion, I am of the considered opinion that prosecution has successfully proved its case beyond doubt that all the accused persons entered the house of the complainant while armed with weapons, which is evident from the facts on the record and testimonies of the witnesses and they were armed with weapons i.e. Swords and lathies.....”

14. After the examining the evidences, learned Trial Court has categorically observed that all the four accused including the appellant



attacked the four persons of the family who sustained injuries. In this regard, photographs have also been relied by the learned Trial Court. Further, it has been categorically recorded that the appellant was carrying lathi which was used to cause injuries.

15. In addition, there is another FIR against the appellant wherein the charges have been framed under section 341 and 325 of IPC against the appellant.
16. Additionally, I am also of the view that delay in the hearing of the present appeal is not attributable to the Court. On 28.01.2014, the appeal was taken up for hearing by the Court but it was the counsel for the appellant who sought adjournment. Thereafter, on 15.01.2014, 28.01.2014 and 21.01.2015, learned counsel for the appellant again sought adjournment. On 17.01.2020, learned counsel for the appellant withdrew the application seeking early hearing of the appeal.
17. Another important aspect is that on 17.03.2017, an application bearing Crl. M. (BAIL) 474/2017 seeking suspension of conviction on the same ground i.e. contesting elections was dismissed by the predecessor bench.
18. No doubt that right of an individual to contest elections is a valuable right granted under the Constitution of India but the same cannot be seen in isolation. Para 19 of the judgment of **Afjal Ansari (supra)** reads as under:-

“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.



Sarvabhounma S. Bagali [Ravikant S. Patil v. Sarvabhounma S. Bagali, (2007) 1 SCC 673, para 15 : (2007) 1 SCC (Cri) 417] , 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.”

19. A perusal of the above para shows that an order granting stay of conviction should not be a rule but an exception and should be resorted only in rare cases depending upon the facts of each case.
20. The Court while staying the conviction cannot be oblivious to the facts which are relevant to the case. To my mind, *firstly*, the conviction is based on the testimonies of the injured persons. *Secondly*, whenever the present appeal was taken up for hearing, it is the appellant who has repeatedly taken time to argue. The delay in hearing the appeal cannot be attributable to the court. *Thirdly*, the similar application seeking suspension of conviction was rejected by the Court.
21. The judgment of **Afjal Ansari (supra)** is distinguishable as in that case, the appellant was sitting Member of Parliament and in all the FIRs against him, either he had not been summoned or had been granted bail whereas in the present case, in another FIR, charges have been framed



and there is no order staying framing of charges.

22. The judgment of ***Dilip Ray (supra)*** is also distinguishable as the appellant therein was 71 years old, had a political career of more than 35 years, and had held various ministerial portfolios in the Government of India as well as the State Government of Odisha.
23. I am also of the view that if the stay of conviction applications are entertained purely on the basis that elections are going to be held and the convict has a right to contest those elections and that right is being effected then before every elections, Court will be flooded with such application which is not the intent of the judgment of ***Afjal Ansari (supra)***.
24. For the reasons noted above, the present application is dismissed.
25. It is clarified that the observations made hereinabove are only for the purposes of deciding the present application and will have no bearing on the merits on the case.
- CRL.A. 836/2010**
26. Since the appeal is of the year 2010, and is pending adjudication for almost 15 years, list the appeal for hearing on 24.04.2025 wherein the appeal shall be taken up for hearing.
27. *Dasti*.
28. Order be uploaded on the website forthwith.

JASMEET SINGH, J

JANUARY 16, 2025/sp

[Click here to check corrigendum, if any](#)