

HON'BLE SRI JUSTICE K. LAKSHMAN

INTERLOCUTORY APPLICATION Nos. 2 AND 3 OF 2025

IN

CRIMINAL APPEAL No.564 OF 2025

COMMON ORDER:

Heard Mr. S. Nagamuthu and Mr. B. Nalin Kumar, learned Senior Counsel representing Mr. Vimal Varma Vasireddy, learned counsel for the petitioner - accused No.2 and Mr. Srinivas Kapatia, learned Special Public Prosecutor for CBI appearing on behalf of the respondent.

2. I.A. No.2 of 2025 is filed by the petitioner under Section - 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') (Section - 482 of Cr.P.C.) to suspend the conviction of the petitioner - appellant - accused No.2 in C.C. No.01 of 2012 recorded by learned Principal Special Judge for CBI Cases, Hyderabad (for short 'Special Court'), *vide* judgment dated 06.05.2025, whereas I.A. No.3 is filed by the petitioner under Section - 430 (1) of the BNSS (Section - 389 (1) of Cr.P.C.) to enlarge him on bail by suspending the sentence of imprisonment imposed by the Special Court *vide* the aforesaid judgment.

3. The aforesaid Criminal Appeal is filed by the petitioner - accused No.2 challenging the impugned judgment passed by the Special Court in C.C. No.1 of 2012, dated 06.05.2025.

4. The petitioner herein is arraigned as accused No.2 in the said C.C. No.1 of 2012. *Vide* impugned judgment, the Special Court having acquitted the petitioner herein for the offences punishable under Sections - 120B read with 468 and 471 of IPC, convicted him for the offences punishable under Sections - 120B read with 420 of IPC and 120B read with 409 of IPC and accordingly imposed sentence of rigorous imprisonment for a period of seven (07) years and to a fine of Rs.10,000/- (Rupees Ten Thousand Only), in default to undergo simple imprisonment for a period of six (06) months for each offence.

5. The allegations levelled against the petitioner herein are that he and accused Nso.1, 3, 8 and 9 conspired to secure grant of mining leases in favour of accused No.4 - M/s. Obulapuram Mining Company Private Limited (for short 'M/s. OMCPL'), namely (a) mining lease over an extent of 39.50 Hectares in Obulapuram Village, D. Hirehal Mandal, Ananthapur District; (b) Mining lease over an extent of 68.50 Hectares in Siddapuram and

Malapanagudi Villages of D. Hirehal Mandal, Ananthapur District and (c) extension of mining lease over an extent of 25.98 Hectares in Survey No.6 of Obulapuram Village. The petitioner and accused No.1 in their capacity as Directors of accused No.4 Company caused the submission of forged mining returns and manipulated Ore quality reports to justify transport and export of illegally mined iron Ore. Accused No.4 Company through the petitioner and accused No.1 used valid mining permits for 68.50 Hectares and 39.50 Hectares leases to cover the transport illegally extracted ore from un-leased or non-permitted areas. Accused No.7 acted on behalf of the petitioner and facilitated the illegal excavation, transport and sale of iron ore by using M/s. Devi Enterprises and M/s. Vijay Leasing Company and it formed part of larger design involving the petitioner herein and accused Nos.1, 3 and 4, and thereby the petitioner herein committed criminal breach of trust, cheating or misconduct punishable under Sections - 120B, 409, 420, 468 and 471 of IPC.

6. To prove the aforesaid allegations, the prosecution examined PWs.1 to 219 and marked Exs.P1 to P3337.

7. On consideration of evidence, both oral and documentary, *vide* impugned judgment, the Special Court recorded conviction against the petitioner herein - accused No.2 and imposed sentences of imprisonment in the manner stated above.

8. The petitioner filed the aforesaid two interlocutory applications seeking suspension of conviction and granting bail by suspending the sentence of imprisonment in the aforesaid C.C.

9. Mr. S. Nagamuthu and Mr. B. Nalin Kumar, learned Senior Counsel made their submissions contending that the Special Court having acquitted the petitioner for the offences under Sections - 120B read with 468 and 471 of IPC erroneously convicted him for the offences punishable under Sections - 120B read with 420 of IPC and 120B read with 409 of IPC. The reasons recorded by the Special Court are without any basis and contrary to evidence, both oral and documentary. The Special Court failed to consider the admissions made by the prosecution witnesses during cross-examination and defence of the petitioner - accused No.2. The Special Court recorded conviction against the petitioner herein without there-being charge. As per the Division Bench Judgment, CBI has to confine investigation only to the extent of illegal

mining. The said aspects were not considered by the Special Court. Therefore, there are fair chances of the petitioner - accused No.2 succeeding in the appeal.

i) They would further submit that the petitioner was arrested on 05.09.2011 at crime stage and he was enlarged on bail on 20.01.2015. Thus, the petitioner was in jail for a period of about three (03) years, four (04) months and fifteen (15) days. *Vide* the impugned judgment, the Special Court imposed maximum sentence of seven (07) years for the offence under Section - 420 read with 120B of IPC. He is in jail from 06.05.2025 i.e., date of pronouncement of impugned judgment. Thus, the petitioner has completed about 50% of the sentence.

ii) They would further submit that the petitioner is a Sitting Member of Karnataka Legislative Assembly representing the Gangawati Assembly Constituency and in view of the impugned judgment and conviction, the Secretary, Karnataka Legislative Assembly has already issued a Notification dated 08.05.2025 stating that the petitioner - accused No.2 stands disqualified from the Membership of Karnataka Legislative Assembly from the date of conviction in terms of the provisions of Article - 191(1)(e) of the

Constitution of India read with Section - 8 of the Representation of the People Act, 1951; that such disqualification shall continue for a period of six (06) years since his release, unless the conviction is stayed by a competent Court. At any time, the Election Commission of India may be issued Notification for conduct of by-election to the aforesaid Constituency to which the petitioner herein got elected, in which event, the petitioner cannot represent people of his constituency who reposed confidence on him by electing him as Member of Legislative Assembly. He cannot contest in the next elections.

iii) With the said submissions, they sought to suspend the conviction as well as sentence of imprisonment by granting bail to the petitioner.

10. Whereas, Mr. Srinivas Kapatia, learned Special Public Prosecutor for CBI, on instructions, would submit that the petitioner herein was in jail from 05.09.2011 to 20.01.2015. Presently he is in jail from 06.05.2025 i.e., from the date of pronouncement of judgment. He has involved in several criminal cases and they are pending. There is no pleading with regard to irreversible consequences to suspend conviction. The offences

committed by the petitioner - accused No.2 are economic offences and there are serious allegations against the petitioner. With the said submissions, he sought to dismiss both the applications.

11. As discussed above, learned Senior Counsel made submissions contending that the impugned judgment is contrary to the evidence, both oral and documentary. The Special Court did not consider the defence taken by the petitioner herein. Therefore, according to him, there are fair chances of the petitioner - accused No.2 succeeding in the appeal. However, the said contentions including the grounds raised by the petitioner can be considered at the time of hearing the appeal itself. While deciding an application under Section - 389 (1) of Cr.P.C., this Court cannot analyze the depositions of prosecution witnesses as held by the Hon'ble Supreme Court in **Omprakash Sahni v. Jai Shankar Chaudhary**¹.

12. It is not in dispute that the petitioner herein was arrested on 05.09.2011 and released on bail on 20.01.2015. Thus, he was in incarceration for a period of more than three (03) years. It is also

¹. (2023) 6 SCC 123

not in dispute that he is in jail from 06.05.2025 i.e., from the date of impugned judgment.

13. As discussed above, the Special Court convicted the petitioner for the aforesaid offences and imposed sentence of rigorous imprisonment for a period of seven (07) years for the aforesaid both offences and both the sentences shall run concurrently. The Special Court imposed maximum sentence of imprisonment of seven years for the offence under Section - 420 read with 120B of IPC. The petitioner has completed nearly half of the incarceration.

14. It is also not in dispute that the petitioner herein is a Sitting MLA. The Secretary, Karnataka Legislative Assembly has already issued a Notification dated 08.05.2025 stating that in view of conviction recorded by the Special Court *vide* impugned judgment, the petitioner stands disqualified from the Membership of Karnataka Legislative Assembly from the date of conviction. There is likelihood of the Election Commission of India issuing notification for by-election.

15. As discussed above, *vide* I.A. Nos.2 and 3 of 2025, the petitioner herein is seeking to suspend the conviction and sentences of imprisonment imposed on his by enlarging him on bail.

16. In **Rama Narang v. Ramesh Narang**², the Apex Court had an occasion to deal with the power of appellate Court to grant bail by suspending the sentence imposed by the trial Court. Accused therein was Director of a Company and by virtue of conviction, there was possibility of disqualification of the accused under the provisions of the Companies Act. The Apex Court held that in certain situations order of conviction can be executable, in the sense, it may incur a disqualification. In such a case, power under Section - 389 (1) of Cr.P.C. could be invoked. In such situations, the attention of the appellate Court must be specifically invited to the consequences that is likely to fall to enable it to apply its mind to the issue since under Section - 389 (1) of Cr.P.C. it is under an obligation to support its order 'for reasons to be recorded by it in writing'. Section - 389 (1) of Cr.P.C. extends to confer power on the appellate Court to stay the operation of the order of conviction. But, while granting a stay of suspension of order of

². (1995) 2 SCC 513

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.

17. In **Ravikant S. Patil v. Sarvabhuma S. Bagali**³, the accused was MLA at the relevant point of time. He was convicted for the offences under Sections - 366 and 376 of IPC and sentenced to undergo imprisonment for a period of seven years by the trial Court. He has preferred an appeal and the High Court granted stay of execution of sentence. In the meanwhile, fresh elections to the Karnataka Legislative Assembly were notified. He got elected. Thereafter, the High Court allowed the appeal preferred by the accused setting aside the judgment of the trial Court. The High Court has also passed an order holding that as on the date of election, accused was disqualified to contest elections. On examination of the said facts, the Apex Court held that all the decisions while recognizing the power to stay conviction had cautioned and clarified that such power should be exercised only in

³. (2007) 1 SCC 673

exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences.

18. In **Rahul Gandhi v. Purnesh Ishwarbhai Modi**⁴, accused is sitting Member of Parliament (Lok Sabha). He was convicted for the offence under Section - 499 of IPC and the trial Court imposed two (02) years of imprisonment. Accused preferred an appeal and also filed an application seeking stay of conviction. The same was denied by the appellate Court. On examination of the said facts and also considering that there was possibility of disqualification of the accused, a 3-Judge Bench of the Apex Court granted suspension of conviction imposed against the accused.

19. In **Afjal Ansari v. State of Uttar Pradesh**⁵, the accused was a Member of Parliament at the relevant point of time and he was convicted for the offence under Section - 3 (1) of the Uttar Pradesh Gangsters Act and four (04) years rigorous imprisonment was imposed on him by the trial Court. On consideration of the said facts, a 3-Judge Bench of the Apex Court laid down the

⁴. (2024) 2 SCC 595

⁵. (2024) 2 SCC 187

following factors for consideration while granting suspension of conviction:

- (i) Criminal Antecedents;
- (ii) Gravity of offence; and
- (iii) Its wider social impact.

The Apex Court also held that the appellate Court including High Court are well empowered to take judicial notice of the consequences.

20. In **Navjot Singh Sidhu v. State of Punjab**⁶, the accused was sitting Member of the Parliament. He was convicted for the offence under Section - 304 Part-II and the trial Court imposed three (03) years of rigorous imprisonment. On consideration of the said facts, the Apex Court held that the person seeking suspension of conviction must draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. The suspension of conviction can be granted in rarest cases by assigning reasons.

⁶. (2007) 2 SCC 574

21. In **K. Ponmudi alias Deivasigamani v. State of Tamil Nadu**⁷, accused was Member of Legislative Assembly of Tamil Nadu. Accused was convicted by the High Court for the offence under Section - 13 (2) read with 13 (1) (e) of the Prevention of Corruption Act read with 109 of IPC by reversing the trial Court judgment of acquittal. Sentence of three (03) years rigorous imprisonment was imposed. On consideration of the said facts and placing reliance on the principle laid down by it in **Afjal Ansari**⁵, the Apex Court held irreversible situation would be created if the conviction is not suspended.

22. In **Bhagwan Ram Shinde Gosai v. State of Gujarat**⁸, the Apex Court held that suspension of sentence to be considered liberally by appellate Court unless there are exceptional circumstances.

23. In **Narcotic Control Bureau v. Lakhwinder Singh**⁹, the Apex Court held that there cannot be a rule of thumb that a convict cannot be released on bail pending an appeal against conviction unless he has undergone half of substantive sentence.

⁷. 2024 SCC OnLine SC 600

⁸. (1999) 4 SCC 421

⁹. 2025 SCC OnLine SC 366

24. In **Ajay Bais @ Rangai @ Charku Bais v. State of Madhya Pradesh**¹⁰, the Apex Court held that suspension of sentence can be granted when appeal is not likely to be heard in near future.

25. Thus, the sum and substance of the principle laid down by the Apex Court in the aforesaid decisions is that this Court has power to suspend the sentence and conviction and also grant bail to the accused by recording reasons. This Court being the appellate Court has to consider the irreversible consequences.

26. Learned Special Public Prosecutor for CBI placing reliance on principle laid down by the Apex Court in **B.R. Kapur v. State of Tamil Nadu**¹¹ would contend that accused cannot claim presumption of innocence till he is convicted by the trial Court. In the said judgment, the Apex Court held that when a lower Court convicts accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate Court and the accused

¹⁰. Criminal Appeal No.1705 of 2025, decided on 01.04.2025

¹¹. (2001) 7 SCC 231

released on bail. In many cases, the accused is released on bail, so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds, the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But, that is not to say that the presumption of innocence continues after the conviction by the trial Court. The conviction and sentence it carries operate against the accused in all their rigour until set aside in appeal, and disqualification that attaches to the conviction and sentence applies as well.

27. In the said case, a question of great constitutional importance arose as to whether a person who has been convicted of a criminal offence and whose conviction has not been suspended pending appeal can be sworn in and can continue to function as the Chief Minister of a State. Thus, the facts of the said case are different to the facts of the present case.

28. Learned Special Public Prosecutor for CBI relied on the principle laid down in **K. Prabhakaran v. P. Jayarajan**¹²,

¹². (2005) 1 SCC 754

wherein a 5-Judge Bench of the Apex Court considered the correct position of law with regard to disqualification in terms of Section - 8 (3) of the Representation of People Act, 1951.

29. In **Shyam Narain Pandey v. State of Uttar Pradesh**¹³, the Apex Court held that stay of conviction can be granted only in exceptional circumstances, though sentence may be suspended but only after recording reasons therefor. No hard and fast rule or guidelines can be laid down as to what those exceptional circumstances are where stay of conviction can be granted. The Court should be wary in staying conviction, especially where offence alleged against convict is punishable with death or life imprisonment or for a period of not less than ten years, or where offence involves moral turpitude. If conviction is stayed in such cases, it would have serious impact on public perception on integrity of judicial institution and would shake public confidence in judiciary. It is only in rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice, when stay of conviction may be granted.

¹³. (2014) 8 SCC 909

30. In **Shakuntala Shukla v. State of U.P.**¹⁴, the Apex Court held that High Court during pendency of appeal shall be very slow in granting bail to the accused convict for serious offences and after conviction by the trial Court, there shall not be any presumption of innocence thereafter. In the said case, accused held guilty of killing deceased and throwing his dead body into well. In the said case, the Apex Court also considered that impugned order therein granting bail found not clear as to which part of the judgment could be said to be submissions and which part could be said to be the findings/reasonings. It also not reflected the submissions on behalf of the State opposing bail pending appeal and even a detailed counter affidavit filed on behalf of the State opposing bail pending appeal also not referred by the High Court and, therefore, the said order is not proper.

31. In **Janardan Ray v. State of Bihar**¹⁵, the accused was convicted for the offence under Section - 302 of IPC, read with 34 of IPC and Section - 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and fine. The Apex Court held that

¹⁴. (2021) 20 SCC 818

¹⁵. Criminal Appeal Nos.1892-1893 of 2025, decided on 09.04.2025

in rare and exceptional circumstances, benefit of suspension of sentence should be granted to the accused convicted for the serious offence under Section - 302 of IPC. The Apex Court also found fault with the suspension order granted by the High Court.

32. In **Sunil S/o LATE Chhatrapal Kedar v. State of Maharashtra**, the accused has been convicted for the offences under Sections - 406, 409, 468 and 471 of IPC and accused was involved in the offences which are economic offences in the nature where public money is involved. On examination of the facts therein, the Bombay High Court held that it is not an exceptional circumstance for grant of stay of conviction.

33. As discussed supra, in the present case, accused has completed 50% of the sentence and he was convicted for the offences under Sections - 120B read with 420 and 409 of IPC. Thus, the facts in the present case are different to the facts of the aforesaid decisions.

34. In view of the aforesaid submissions, it is apt to note that the petitioner herein - accused No.2 has specifically pleaded the irreversible circumstances referring to Section - 8 (3) of the

R.P. Act and also notification dated 08.05.2025 issued by the Secretary, Karnataka Legislative Assembly. In the light of the same, it is relevant to note that Section - 8 of the R.P. Act, 1951, deals with 'disqualification on conviction for certain offences' and as per Sub-Section (3) of Section - 8 of the R.P. Act, 1951 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. As discussed supra, referring to the impugned judgment and conviction of the petitioner herein - accused No.2, the Secretary, Karnataka Legislative Assembly has already issued notification dated 08.05.2025 stating that the said conviction renders the petitioner disqualify from the Membership of Legislative Assembly. Therefore, the Election Commission of India will issue a notification for conduct of by-elections if the conviction is not suspended by this Court.

35. Thus, the petitioner has specifically pleaded the said facts and also irreversible circumstances.

36. It is apt to note that even in the absence of pleading to the said effect, it is a statutory presumption that if this Court fails to suspend the conviction, disqualification of the petitioner herein will continue and elections will be held for the subject constituency, in which event, the petitioner will not be in a position to represent his constituency people.

37. In the present case, the petitioner has completed 50% of the conviction. While considering the application filed by the petitioner seeking suspension of conviction, this Court has to consider the aforesaid aspects, pros and cons of suspension of conviction and also irreversible circumstances. In the light of the same, this Court is of the *prima facie* view that if conviction is not suspended, the petitioner, sitting MLA, who gained confidence of the People, would not be in a position to represent his constituency people. Therefore, this Court is inclined to suspend the conviction recorded by the Special Court *vide* impugned judgment.

38. In the light of the aforesaid discussion, in the present case, the Special Court convicted the petitioner - accused No.2 for the offences punishable under Sections - 120B read with 420 of

IPC and 120B read with 409 of IPC and imposed sentence of seven (07) years of rigorous imprisonment. He has completed nearly half of the sentence of imprisonment. He is in jail from 06.05.2025 i.e., date of pronouncement of impugned judgment. During trial, the petitioner was on bail. There is no allegation against him that he has not co-operated with the Special Court in concluding trial and that he has violated the conditions imposed on him while granting bail. He has paid the fine amount imposed by the Special Court. In proof of the same, he has filed copies of payment of fine amount. He is sitting Member of Karnataka Legislative Assembly representing the Gangawati Constituency. In view of the impugned judgment and recording conviction and sentence of imprisonment by the Special Court, the Secretary, Karnataka Legislative Assembly has already issued a Notification dated 08.05.2025 stating that the petitioner stands disqualified from the Membership of Karnataka Legislative Assembly from the date of conviction. Thus, there is every likely-hood of the Election Commission of India issuing Notification for conduct of by-election to the aforesaid Constituency to which the petitioner herein is representing under the Representation of People Act,

1951. Apart from disqualification, the petitioner cannot contest in the elections.

39. As discussed above, several contentions and grounds raised by the petitioner - accused No.2 can be considered at the time of hearing of appeal. Analyzing the evidence of prosecution witnesses at this stage is impermissible. However, the appeal is of the current year. The petitioner herein - accused No.2 has completed nearly half of the sentence. Thus, this Court is of the considered view that if the conviction is not suspended there is likelihood of the Election Commission of India issuing notification for conduct of by-election to the aforesaid Constituency. In such an event, the petitioner will be put to irreparable loss and injury. Thus, there are irreversible consequences and special circumstances to grant bail to the petitioner by suspending the conviction and sentence of imprisonment

Both I.A. Nos.2 and 3 of 2025 in CrI.A. No.564 of 2025 are allowed and the conviction and sentences of imprisonment imposed on the petitioner herein - appellant - accused No.2 in C.C. No.01 of 2012 *vide* judgment dated 06.05.2025 by learned

Principal Special Judge for CBI Cases, Hyderabad, are hereby suspended by granting bail to the petitioner herein - appellant - accused No.2 on the following conditions:

- i) He shall execute a personal bond for a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) with two (02) sureties for a like sum each to the satisfaction of Principal Special Judge for CBI Cases, Hyderabad;
- ii) He shall not leave the Country without prior permission of this Court; and
- iii) He shall not indulge in any criminal acts during bail period.

11th June, 2025
Mgr

K. LAKSHMAN, J