

A.F.R.

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Reserved on 25.4.2024

Delivered on 27.4.2024

Court No. 79

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2596 of 2024

Dhananjay Singh and another.....Appellants

Through : Shri Sudhir Walia, Senior Advocate,
Shri Saghir Ahmad, Senior Advocate,
Shri Kartikeya Saran,
Shri S.P. Singh,
Shri Prakash Mani Tripathi,
Shri Mohammad Raghieb Ali

Versus

State of U.P.Opposite Party

Through : Shri P.C. Srivastava, Additional Advocate General
Shri J.K. Upadhyay, A.G.A.
Shri Deepak Mishra, A.G.A.
Shri Vikas Sahai, A.G.A.
Shri Rabindra Kumar Singh, A.G.A.

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CORAM : Hon'ble Sanjay Kumar Singh, J.

ORDER

**In re: Criminal Misc. Application (For Suspension of Sentence)
Under Section 389 (1) Cr.P.C. No. 02 of 2024**

1. The above mentioned appeal under Section 374(2) Cr.P.C. has been preferred by the appellants-Dhananjay Singh and Santosh Vikram Singh against the judgment of conviction dated 05.03.2024 and order of sentence dated 06.03.2024 passed by learned Additional Sessions Judge-IV/Special Judge, MP/MLA, Jaunpur in Sessions Trial No. 109 of 2020 (State Vs. Dhananjay Singh and another) arising out of Case Crime No. 142 of 2020, Police Station Line Bazar, District Jaunpur, convicting and sentencing the appellants as under :-

(a) Seven years' rigorous imprisonment and fine of Rs. 50,000/- for the offence under Section 364 I.P.C. and in default of payment of fine, four months' additional imprisonment.

(b) Five years' rigorous imprisonment and fine of Rs. 25,000/- for the offence under Section 386 I.P.C. and in default of payment of fine, three months' additional imprisonment.

(c) One year's rigorous imprisonment and fine of Rs. 10,000/- for the offence under Section 504 I.P.C. and in default of payment of fine, one month's additional imprisonment.

(d) Two years' rigorous imprisonment and fine of Rs. 15,000/- for the offence under Section 506 I.P.C. and in default of payment of fine, forty five days' additional imprisonment.

(e) Seven years' rigorous imprisonment and fine of Rs. 50,000/- for the offence under Section 120-B I.P.C. and in default of payment

of fine, four months' additional imprisonment.

However, the sentences were ordered to run concurrently.

Relief

2. By means of this application No. 02 of 2024, a prayer has been made to stay the operation and effect of the judgment of conviction dated 05.03.2024 and order of sentence dated 06.03.2024 of the appellants and enlarge them on bail during pendency of this Criminal Appeal before this Court.

3. Heard Shri Sudhir Walia, learned Senior counsel, Shri Saghir Ahmad learned Senior counsel assisted by Shri Kartikay Saran, Shri S.P. Singh, Shri Prakash Mani Tripathi and Shri Mohammad Raghieb Ali, learned counsel appearing on behalf of the appellants and Shri P.C. Srivastava, learned Additional Advocate General assisted by Shri J.K. Upadhyay, Shri Deepak Mishra, Shri Vikas Sahai and Shri Rabindra Kumar Singh, learned Additional Government Advocate representing the State.

Brief facts

4. The emanation of facts giving rise to the present Criminal Appeal as per prosecution case are that on 10.05.2022 at about 10:40 PM, an FIR was lodged by Shri Abhinav Singhal, complainant/informant (PW-1/CW-1), verbatim whereof is quoted here-under :-

"Sir, with due respect, I would like to inform you that last couple of weeks back I have got random call from (8948320530) & Vikram Singh (9415905703) regarding to meet Mr. Dhananjay Singh. Once I have meet with him before Holi with Dhananjay Singh ji at his home but his phone started again on 04.05.2020. Surprise to note that today Mr. Vikram singh has visit our site and forcely with his two person captured and taken to me at Dhananjay Singh ji house when I reached. Dhananjay Singh ji came with his black colour

pistol and using abusing words his intention is for supply the material (aggregate & Sand) to STP site. By forcibly he has taken my M.D. mobile no and talked to them in front of me. They have called to UPJN department J.E. also and asking for quality of materials. Mr. Satya Prakash Yadav (8115879097) told him that the quality which they have supplied is not up to the mark (back pto) that is why we are not in position to place the order, more to him. Where as, what ever they forcibly send it may be consumed in some other disposing work but not for construction. Today at 17.30 pm Vikram Singh along with two men with black colour fortuner (0111) come at panchatiya site. Finally they leave and I also leave from there office but Vikram Singh told me that provide your supply rate list so that he can proceed further. The whole incident took place in residence of Mr. Dhananjay Singh. They forcefully want to supply quality less material to our firm and for that they said that they will do this under any situation. Mr. Dhananjay Singh and his men are very hard criminals and through his gangs and gang members he forcefully wants to do this things which we already denied. He has threaten me that I and my MD and firm owner will not accept his demand or cooperate, then he will not leave any one I am very much afraid and I want your help. So I kindly request you to lodge my FIR and take stern action against gangster Dhanjay Singh, Vikram Singh and his men."

5. After registration of F.I.R., appellants were promptly arrested in the night intervening 10/11.05.2020 at about 02:50 AM.

6. During investigation Statement under Section 164 of Cr.P.C.of Abhinav Singhal (complainant / informant) was also recorded on 02.07.2020, in which he has denied the alleged incident and did not support the prosecution case. The said statement of the complainant is quoted as under:-

"मैं नमामि गंगे प्रोजेक्ट उसमें उपस्थित प्रोजेक्ट में प्रोजेक्ट मैनेजर हूँ। दिनांक 10 मई 2020 को विक्रम जी के साथ पूर्व सांसद धनंजय सिंह के घर गया था वहां पर एक जन शिकायत के सिलसिले में गया था। लाकडाउन की वजह से मेरे पास कार न होने की वजह से सांसद जी ने विक्रम को कार लेकर मेरे पास भेजा था। वहां पर जाने के बाद हमारी क्वालिटी को लेकर वार्तालाप हुई और मैंने उनको असोरेंस दिया कि हम अच्छी क्वालिटी का काम करेंगे। उसके बाद उन्होंने मुझे जहां से पिकअप किया था वहीं पर छुड़वा दिया ड्यूटिंग दिस टेक्निकल डिसकसन मेरे पर कोई दबाव नहीं डाला गया, न ही गाली गलौज की गयी और न ही मेरा अपहरण किया गया मैंने एम.डी. और कम्पनी के सीनियर के कहने पर मैं S.P. साहेब के पास बताने गया था सारा प्रकरण क्या था,

पता नहीं मेरे सीनियर के दिमाग में क्या था मुझे नहीं मालूम। S.P. साहेब ने मुझे दिनेश कुमार पाण्डे के पास भेजा, जो S.H.O. हैं वहां पे। S.H.O. ने मुझे 03 घंटे-04 घंटे तक मुझे बैठा कर रखा। मेरे ऊपर S.H.O. ने दबाव बनाया कि आप कम्प्लेंट लिखो। फिर मुझे डिक्टेट करके कम्प्लेंट लिखवाया जिसको बाद में उन्होंने FIR में दर्ज कर दिया। अगले दिन 11.05.2020 को मुझे सोशल मीडिया से पता चला कि सांसद जी की गिरफ्तारी ढाई बजे हुई। मेरे साथ कुछ भी ऐसा नहीं हुआ जो मैं सांसद जी के खिलाफ FIR या कम्प्लेंट करूं। मेरे ऊपर कोई दबाव नहीं है और मैंने 11.05.2020 को ही पत्र S.P. साहेब को दिया था कि मैंने कोई कम्प्लेंट नहीं दिया था उसके बारे में मैंने अफीडेविट भी दिया है। मुझे और कुछ नहीं कहना है।"

7. After culmination of the investigation, Shri Kaushlendra Pratap Singh, first Investigating Officer/PW-4 filed final/closer report No. 83 of 2020 dated 03.07.2020 after recording his conclusion in the case diary that no crime was found to have been committed, on which Circle Officer, City Jaunpur made objection and directed for further investigation.

8. On 26.07.2020, further investigation was handed over to Mr. Jai Prakash Singh-second Investigating Officer/PW-6, who after further investigation, submitted Charge sheet No. 228 of 2020 dated 05.08.2020 under Sections 364, 386, 504, 506 and 120-B I.P.C. against appellants Dhananjay Singh and Santosh Vikram Singh, on which learned C.J.M., Jaunpur took cognizance on 06.08.2020 and on 14.08.2020, the case was committed to the Court of Sessions for trial.

9. On 02.04.2022, charges under Sections 364, 386, 504, 506 and 120-B I.P.C. were framed against the appellants, which reads as under:-

“1. यह कि दिनांक-10.05.2020 को समय करीब 17.30 बजे घटनास्थल पचहटिया थाना लाइन भाजार जनपद जौनपुर में आप लोगों ने अपने सबके सामान्य आशय के अग्रसारण में वादी मुकदमा अभिनव सिंहल की हत्या करने के आशय से अपहरण कर ऐसे व्यनित किया कि वह अपनी हत्या होने के खतरे में पड़ जाये। इस प्रकार आप

लोगों ने ऐसा अपराध कारित किया, जो धारा-364 भा०दं०सं० के अधीन दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

2. यह कि उपरोक्त समय दिनांक स्थान पर आप लोगों ने अपने सबके सामान्य आशय के अग्रसारण में वादी मुकदमा अभिनव सिंहल को मृत्यु या घोर उपहति के भय में डालकर उद्घापन कर ऐसा अपराध कारित किया है। जो धारा-386 भा०दं०सं० के अंतर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

3. यह कि उपरोक्त दिनांक, समय व स्थान पर आप लोगों ने अपने सबके सामान्य आशय के अग्रसारणमें वादी मुकदमा अभिनव सिंहल को भट्टी-भट्टी गालियां देकर शास्य अपमानित किया। इस प्रकार आप लोगों ने एक ऐसा अपराध कारित किया है। जो धारा-504 भा०दं०सं० के अंतर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

4. यह कि उपरोक्त दिनांक, समय व स्थान पर आप लोगों ने अपने सबके सामान्य आशय के अग्रसारण में वादी मुकदमा अभिनव सिंहल को जान से मारने की धमकी देकर ऐसा अपराध कारित किया है, जो धारा-506 भा०दं०सं० के अंतर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

5. यह कि उपरोक्त दिनांक समय व स्थान पर आप लोगों ने अपने अज्ञात सहयोगियों के साथ मिलकर पूर्व नियोजित योजनानुसार वादी मुकदमा अभिनव सिंहल का अपहरण कर मृत्यु या घोर उपहति में डालकर उद्घापन करने का आपराधिक षडयन्त्र रचकर ऐसा अपराध किये हैं, जो धारा-120 बी भा०दं०सं० के अंतर्गत दण्डनीय है और जो इस न्यायालय के प्रसंज्ञान में है।"

The appellants denied the charges and claimed to be tried.

10. Before the Trial Court, following three prosecution witnesses of the fact and three formal prosecution witnesses were produced to prove the charges against the appellants :

The prosecution witnesses of fact

(i) PW-1 Abhinav Singhal (Complainant)

(ii) PW-2 Satya Prakash Yadav

(iii) PW-3 Harendra Pal

The formal prosecution witnesses

(i) PW-4 Kaishlendra Pratap Singh(First Investigating Officer)

(ii) PW-5 Anil Kumar Yadav

(iii) PW-6 Jai Prakash Yadav (Second Investigating Officer)

Following three witnesses were also summoned and examined before the trial court including the complainant (PW-1)

The Court Witnesses

(i) CW-1 Abhinav Singhal (PW-1)

(ii) CW-2 Vinod Kumar Singh (owner of Fortuner Car)

(iii) CW-3 Dinesh Prakash Pandey (S.H.O.,P.S. Line Bazar)

11. On behalf of prosecution, following thirteen documents were produced and exhibited before the trial Court.

i-Written Complaint (Ext. Ka-1).

ii-CCTV footage Certificate (Ext.Ka-2).

iii-Site Plan (Ext. Ka-3).

iv-Site Plan (Ext. Ka-4).

v- First Information Report (Ext. Ka-5).

vi-General Diary No. 40 regarding registration of case (Ext.Ka-6).

vii-Charge Sheet (Ext. Ka-7).

viii-Statement U/s 164 Cr.P.C. of the complainant (Ext. Ka-8).

ix-Letter dated 14.05.2020 of complainant sent to S.H.O, Line Bazar (Ext. Ka-9).

x-Letter dated 26.05.2020 of complainant sent to District Magistrate, Jaunpur (Ext. Ka-10).

xi-Affidavit dated 26.05.2020 of complainant sent to District Magistrate, Jaunpur (Ext. Ka.11).

xii-Letter dated 27.05.2020 of complainant sent to District Magistrate, Jaunpur (Ext.Ka.12).

xiii-G.D. Entry No. 003 dated 11.05.2020 made at 05:02 O'clock regarding arrest of appellants at 02:50 am (Ext. Ka.13)

12. Five C.D.s of CCTV footage have been exhibited as (Material Ext-1) to (Material Ext-5).

13. The statements of accused-appellants under Section 313 Cr.P.C. were recorded on 05.11.2022 and their additional statements under Section 313 Cr.P.C. were recorded on 13.02.2024, in which they have denied the allegations levelled against them.

Submissions on behalf of the appellants

14. Main substratum of argument of learned counsel for the appellants is that the appellants have been falsely implicated due to political reasons by fabricating and getting false case registered against the by the police. It is a case of no evidence against the appellants. The impugned judgment and order of the trial court are illegal and based on perverse findings, which are apparent on the face of record itself. The presumption drawn and findings recorded by the trial Court while convicting and sentencing the appellants by the impugned judgment and order dated 05.03.2020/06.03.2024 are in complete disregard to the provisions of Cr.P.C. and Evidence Act, hence the same are not sustainable in

the eye of law. Appellants have been convicted on the basis of presumption / imagination without any legal evidence admissible under the law. The Trial Court has failed to appreciate that ingredients to constitute the offence punishable under Sections 364, 386, 504, 506 and 120-B IPC are lacking in this case. Learned counsel for the appellants, in order to strengthen the aforesaid submissions, further argued that:-

14.1. As per prosecution case, alleged incident as mentioned in the F.I.R. took place on 10.05.2020 at 5:30 PM and F.I.R. was lodged on 10.05.2020 at 10.40 PM without any preliminary enquiry against appellant No.1 Dhananjay Singh, who has been MLA twice and MP once and appellant No.2 Santosh Vikram Singh. Thereafter police in a pre-planned manner promptly arrested them at 02:50 AM in the night intervening 10/11.05.2020.

14.2. Referring the applications dated 12.05.2020, 13.05.2020 and 26.05.2020 (Ext. Ka-10) as well as affidavit dated 26.05.2020 (Ext. Ka-11) of the complainant, it is submitted that complainant has stated inter alia that on the direction of M.L.Singhal, Managing Director of the company 'Pulkit Project Pvt. Ltd', he met Superintendent of Police, Jaunpur on 10.05.2020, who sent him to S.H.O. Police Station Line Bazar. When he went there, Dinesh Prakash Pandey, Station House Officer made him to sit for about three hours and dictated a complaint against the appellants and obtained his signature putting pressure on him. On the next day when he came to know that Dhananjay Singh, Ex MP was arrested on his F.I.R., he was shocked. Thereafter, he personally met Superintendent of Police, Jaunpur and also wrote an application to him on 12.05.2020. When nothing happened, then he also sent an

application to the Chief Minister stating true facts. Thereafter complainant sent a letter dated 26.05.2020 and his affidavit dated 26.05.2020 to District Magistrate, Jaunpur disclosing all the true facts making allegation against S.H.O. Dinesh Prakesh Pandey (CW-3) that he did not allow him to leave his house and to meet his advocate and to give any application before Sessions Judge. The complainant also disclosed that S.H.O. Dinesh Prakash Pandey pressurized him to leave district Jaunpur and to go to his native home at Muzaffarnagar for some time.

14.3. The case of the prosecution is that on 14.05.2020 security was provided to the complainant is wrong on the face of record. In fact after getting false F.I.R. registered by the S.H.O. Police Station Line Bazar, local security was given to the complainant on 10.05.2020 itself.

14.4. The complainant before the Trial Court clearly stated that after registration of F.I.R., his statement was not recorded by the inspector. When statement under Section 161 Cr.P.C. was read out to the complainant, after listening to it he said that I had not given any such statement to the Inspector.

14.5. The complainant-Abhinav Singhal in his statement under Section 164 Cr.P.C. dated 02.07.2020, did not utter anything against the appellants so far as commission of alleged offence is concerned. He has not supported the prosecution case rather he disclosed the true facts. He also proved his statement under Section 164 Cr.P.C. in accordance with law. There is full consistency and corroboration in the complainant's statement under Section 164 Cr.P.C. and his statement recorded before the trial Court as PW-1 and CW-1.

14.6. All the three prosecution witnesses of the fact namely Abhinav Singhal, complainant (PW-1), Satya Prakash Yadav (PW-2), Harendra Pal (PW-3) have not supported the prosecution case and completely denied the alleged incident stating true facts. The informant / complainant Abhinav Singhal (PW-1) has also been examined as CW-1 but again he has not supported the prosecution case. Vinod Kumar Singh who is owner of Fortuner Car, has been examined as CW-2, but he also did not support the prosecution case.

14.7. There is no substantive evidence against the appellants to prove their guilt beyond reasonable doubt, even then the Trial Court has convicted and sentenced the appellants on the basis of wrong presumption and placing reliance upon police papers created by the police in order to falsely implicate the appellants, broken CD of CCTV footages and the statements under Sections 161 Cr.P.C. which are not a substantive piece of evidence and can be used only for corroboration.

14.8. The fact and issue so far commission of alleged offence are concerned, are relevant, but those facts have not been duly proved by the prosecution witnesses beyond reasonable doubt.

14.9. Referring the investigation part, it is pointed out that initially, a final / closure report dated 03.07.2020 was submitted by the first investigating officer-Kaushlendra Pratap Singh (PW-4) but on the direction of the then Circle Officer, further investigation was handed over to second investigating officer on 26.07.2020 on the ground that statements of Mohan Lal Singhal (MD) and Pulkit (employee of STP, Namami Gangey Project) have not been recorded, the CCTV footage dated 10.05.2020 has not been

enclosed along with case diary, audio clip of conversation between complainant Abhinav Singhal and Mohan Lal Singhal has not been recovered and sent to forensic laboratory, Lucknow and did not trace the owner of vehicle No. UP50 AJ 0111, but the second investigating officer, except to trace the owner of vehicle in question, also did nothing.

14.10. The ingredients of mens rea and actus-reus, which are pre-requisite conditions for commission of an offence are lacking in the present case.

14.11. So far as electronic evidence is concerned, there is neither any Forensic Science Laboratory Report nor required certificates under Section 65-B of Indian Evidence Act are on record, hence, the same cannot be taken into consideration in view of the judgment of the Apex Court in the case of **Anvar P.V. vs. P.K. Basheer and Ors.**, (2014) 10 SCC 473

14.12. The trial court, without any evidence on record, gave finding of demand of ransom on his own, whereas prosecution case is otherwise. It is further submitted that imagination is not an evidence in accordance with Section 3 of Evidence Act, hence, in view of Section 101 of the Evidence Act, the trial court cannot set up another story other than prosecution case.

14.13. There is no direct evidence of facts in issue nor any circumstances in order to prove alleged guilt of the appellants.

14.14. There is no evidence of extending any influence by the appellants over the prosecution witnesses.

14.15. With regard to whatsapp message alleged to have been sent by PW-1 to PW-3, it is argued that the said whatsapp

message was not collected during investigation. Even during trial, no question was put to the Investigating Officers regarding non collection of said whatsapp message.

14.16. The prosecution could not prove the allegation of abduction of complainant against the appellants. Stretching his submissions, it is further submitted that when the offence of abduction is not made out, then all other offences automatically abolish.

14.17. Referring the internal page no. 42 of the judgment, it is submitted that the trial court has recorded a wrong finding that *"the statement made by the complainant that the accused have not committed any crime was made long after the incident. This appears to have been done under duress while the evidence on file is contrary."* In this regard it is further pointed out that on 11.05.2020 when the complainant came to know about the registration of false F.I.R., he on the very next day sent an application on 12.05.2020 to Superintendent of Police, Jaunpur and application dated 13.05.2020 to Chief Minister of State of U.P. denying the incident by stating true facts.

14.18. Much emphasis has been given by contending that the accused appellants cannot be convicted either on the basis of evidence of formal witnesses or material exhibits. The accused-appellants also cannot be held guilty on the basis of corroborative evidence.

14.19. The materials produced by the prosecution to prove the prosecution case do not inspire confidence.

14.20. It is well settled that according to Section 231 of Cr.P.C. and Section 101 of Indian Evidence Act, the burden of proof of the

charges against the accused is on the prosecution, which could not be proved by the prosecution witnesses of fact in the present case.

14.21. The appellant No.1 is a political person. Referring the statement of the P.W.2, it is pointed out that P.W.-2 (Satya Prakash) in his statement before the Trial Court has stated inter alia that Dhananjay Singh is a popular leader of the District. Some people go to his place to make complaint. He used to visit various public representative in respect of public complaints. In this matter, I had already given an affidavit on 29.05.2020 before the Court out of his own freewill. The complainant told him that no such untoward incident had happened with him. The conversation took place in a very dignified manner.

14.22. Referring the judgment of the Apex Court in the case of **Lallu Manjhi and Another vs. State of Jharkhand, (2003) 2 SCC 401**, and in the case of **State of Rajasthan vs. Babu Meena, (2013) 4 SCC 206**, it is also argued that the statement under Section 313 Cr.P.C. of the accused-appellants has not been recorded in the light of guideline laid down by the Apex Court. The relevant paragraph no.14 of the judgment of **Lallu Manjhi (Supra)** is quoted here as under:-

"14. Incidentally, it may also be stated that the manner in which the Trial Court has recorded the statements of the accused persons u/s 313 Cr.P.C. is far from satisfactory. The entire prosecution case running into very many details has been summed up into just 5 questions asked to each of the accused persons. It is obligatory on the part of the Trial Court to examine the accused for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him. If such opportunity is not afforded, the incriminating pieces of evidence available in the prosecution evidence cannot be relied on for the purpose of recording conviction of the accused persons."

14.23. Lastly it is submitted that the appellant No.1 has been convicted only in the present case. Referring and relying on the

judgments of the Hon'ble Supreme Court in the cases of **Afjal Ansari vs. State of Uttar Pradesh**, (2024) 2 SCC 187, **Navjot Singh Sidhu vs. State of Punjab and Anr.** (2007) 2 SCC 574 and **Sucha Singh Lanagh vs. State of Punjab**, Criminal Appeal No. 40 of 2017 arising out of SLP (Crl.) No. 5 of 2017, it is submitted that appellant No.1 has been a Member of the Uttar Pradesh Legislative Assembly twice and a Member of Parliament once. He wants to contest the elections of Member of Parliament, 2024. The notification has already been issued notifying the schedule for 'Lok-Sabha elections 2024' and last date of filing of nomination papers for Member of Parliament, Jaunpur is to begin from 29.04.2024 to 05.05.2024. In case, the impugned conviction of the appellant No.1 is not stayed, he will be deprived of his right to contest Lok-Sabha election 2024 in view of the Section 8(3) of Representation of People Act, 1951. Much emphasis has been given by contending that in case of irreversible situation of acquittal in future, the loss of the appellant No.1 cannot be compensated. If he misses the bus, the time will not come back and the clock will not turn back.

Submissions on behalf of the State

15. On the other hand, it is argued on behalf of the State that :-

15.1. The F.I.R. of the incident was promptly lodged by the complainant Abhinav Shinghal on 10.05.2020 at 10:40 PM with regard to incident of same day, which took place at 5:30 PM. Appellants are named accused in the F.I.R. The complainant during trial, has proved his signature on the F.I.R. (Ext.Ka.1).

15.2. On 10.05.2020, when complainant was abducted, he sent a whatsapp message to Harendra Pal (PW-3) that "*Dhananjay Singh*

ke aadmi muzhai un ka ghar per le ker aya hai. Inform to pulkit sir immediately”.

15.3. After two days of the incident, the complainant started giving application from 12.05.2020 changing his version under the pressure, fear and influence of the appellants.

15.4. On 10.05.2020, complainant was also provided security and thereafter, on his demand/letter dated 14.05.2020 (Ext.Ka-9), he was also provided security to go to his native place Muzaffar Nagar.

15.5. Referring the G.D. No. 003 dated 11.05.2020 at 05:02 O'clock (Ext.Ka-13), it is submitted that a black coloured fortuner Car no. UP-50-AJ-0111 was also recovered from the resident of Dhananjai Singh at the time of his arrest.

15.6. The complainant in his letter dated 12.05.2020 addressed to the Superintendent of Police, Jaunpur stated inter alia that “*the complaint was given by me on exaggerated facts as my mental condition was not good and I was in some pressure*”, therefore it cannot be said that the complainant had not lodged F.I.R.

15.7. There are material contradictions regarding the complainant's stand that Dhananjay Singh was talking to Mohan Lal Singhal, MD over telephone. In this regard, it is further pointed out that complainant in his letter dated 13.05.2020 addressed to the Chief Minister and affidavit dated 26.05.2020 (Ext. Ka-11) has stated inter-alia that Dhananjay Singh had talked with owner (MD) of my company over telephone but when the complainant was examined as PW-1 on 15.04.2022, he in his cross-examination has stated

that it is wrong to say that Dhananjay Singh, after taking the mobile number of MD of his company, talked him in his presence.

15.8. The investigating officer had collected CCTV footage of the spot and Harendra Pal (PW-3) had also given certificate dated 11.05.2020 (Ext. Ka-2) mentioning that he is posted on the post of Supervisor in M/s SPML Pulkit Project Pvt. Ltd. and no interpolation has been done in the CCTV footage installed at the working site.

15.9. During investigation, the location of mobile number 9968872016 at 17:17:06 hours and 17:32:59 hours, used by the complainant, was found near Gurudwara Ras Mandal, Jaunpur, then Jessis Chauraha, Bus Stand, then Chandra Hotel, Oland Ganj and thereafter near the site in question again via the same route, as such, it was proved from the location of the complainant that he was near the house of Dhananjay Singh at the time of incident.

15.10. It is fairly admitted that investigation of this case has not been done properly by the investigating officers. In this regard it is submitted that the accused appellants cannot take benefit of the faulty investigation.

15.11. Much emphasis has been given by contending that considering the facts and circumstances of the case in totality, only conclusion can be drawn that the complainant and other prosecution witnesses have been won over.

15.12. Referring the list of criminal history of the appellant No.1 enclosed as Annexure No. CA-1 to the counter affidavit dated 22.04.2024 filed on behalf of the State and S.A-1 to the Supplementary Affidavit dated 20.04.2024 filed on behalf of appellants, it is submitted that the appellant No.1 has long criminal

history of 46 cases including heinous offences, out of which in 28 cases, appellant No.1 has been acquitted as the witnesses turned hostile due to fear of accused Dhananjay Singh. It is also submitted that due to terror of appellant No.1, no one dares to depose against him.

15.13. Lastly it is submitted that the trial court considering all aspects of the matter, rightly convicted the appellants, therefore, the relief as sought by the appellants by means of this Criminal Appeal is liable to be rejected.

Issue

16. Having heard the submissions of learned counsel for the parties at length and examined the matter in its entirety, I find that in view of the interim relief as sought by means of above mentioned Criminal Misc. Application Under Section 389 (1) Cr.P.C., at this stage, this Court is only required to consider the following two prayer of the appellants for interim relief during pendency of this Criminal Appeal :-

(a) Suspension of Sentence

(b) Stay of operation and effect of judgment of conviction

Discussion & Conclusion about suspension of sentence

17. Following facts which emerge from the record and are not in dispute are as follows :-

17.1. All the three prosecution witnesses (PW-1, PW-2 and PW-3) of fact as well as two court witnesses (CW-1 and CW-2) did not support the prosecution case and they denied the incident in the

manner as alleged in the F.I.R., hence, they have been declared hostile by the trial court.

17.2. Neither the statement under Section 161 Cr.P.C. of Mohan Lal Singhal, M.D. of the company nor Pulkit (employee of STP, Namami Gangey Project) was recorded nor they were produced by the prosecution before the trial court whereas they were material witnesses who could throw some light on the prosecution case.

17.3. Anil Kumar (PW-5), who registered the F.I.R., in his statement has stated inter-alia that he had registered F.I.R. on the direction of Dinesh Prakash Pandey, S.H.O., Line Bazar, Jaunpur.

17.4. Despite serious allegation of the complainant against Dinesh Prakash Pandey, S.H.O., Line Bazar, Jaunpur that he dictated the complaint and obtained complainant's signature under pressure, he was not produced by the prosecution as prosecution witness. Later he was summoned and examined as CW-3 by the trial Court, who supported the prosecution case.

17.5. No incriminating material like mobile phones, conversation between complainant and M.L. Singhal (M.D. of the company) etc. have been collected.

17.6. Though the prosecution has collected five CCTV footages, but there is no certificate under Section 65-B of the evidence Act with regard to all CCTV footages, which are essential for considering the electronic evidence. Even all the CCTV footages (Material Ext-1 to Material Ext-5) produced by the prosecution before the trial court were useless as the same were produced by the prosecution in a broken condition which were not able to play.

17.7. As per the prosecution case, main allegation against the appellants is that they, through gang members, by hook or by crook adopting different modus operandi forcibly wanted to supply quality less materials (Aggregate, Sand, Ballast, Morang etc.) to the firm in question in the project which was being run in village Pachatiya, district Jaunpur at that time under "Namami Gangey Project Scheme". There is no allegation of demand of any ransom by the accused-appellants from the complainant but the trial court, at internal page no. 37 of the judgment, has recorded an erroneous finding mentioning that from the evidence on record, it is clear that the complainant and Satya Prakash Yadav were called by the accused and after giving threat to Mohan Lal Singhal on phone, a ransom was demanded.

17.8. The statements U/s 313 Cr.P.C. of the accused appellants have been recorded on 05.11.2022 and 13.02.2024. The relevant part of the statement of the appellants relating to their defence is as under:-

A. The appellant No.1 in his statement dated 05.11.2022 under Section 313 Cr.P.C. has taken stand inter alia that there was gross irregularity in the S.T.P. work, which was opposed by him on receiving complaint. The complainant -Abhinav Singhal came to his place voluntarily. Earlier also he used to come. He has nothing to do with the case. He has been implicated because of his fight against corruption. Public money is being misused. The appellant No.2 in his statement dated 05.11.2022 under Section 313 Cr.P.C. has stated inter alia that he is innocent and false case has been registered against him.

B. The appellant No.1 in his statement dated 13.02.2024 under Section 313 Cr.P.C. has stated inter alia that F.I.R. is false, complainant did not give such statement as mentioned in the F.I.R. Wrong action has been taken by the Investigating Officer. Case has been registered due to political malice. He is innocent and was not involved in the alleged crime. He has been implicated due to political malice on raising his voice against corruption. The appellant No.2 in his statement dated 13.02.2024 under Section 313 Cr.P.C. has stated inter alia that case has been registered against him due to enmity. He is innocent.

17.9. The chain of prosecution case is missing, therefore, the accused appellants are entitled to benefit of doubt.

17.10. The appellants were on bail during trial and there is no evidence to indicate that they misused the liberty of bail.

17.11. The maximum sentence awarded to the appellants is up to seven years. There is no possibility of absconding of the appellants.

17.12. In view of the above, considering the facts and circumstances of the case in totality, nature of allegations, role attributed to the appellants, material evidence on the record, submissions advanced on behalf of the parties concerned and reasons as noted above, this Court is of the view that the application under Section 389(1) Cr.P.C. of the appellants for suspension of their sentence dated 06.03.2020 during pendency of this Criminal Appeal is liable to be allowed.

18. Accordingly appellants, namely, Dhananjay Singh and Santosh Vikram Singh, who are convicted by the impugned judgment dated

05.03.2024 and sentenced by impugned judgment and order dated 06.03.2024, as noted above, be released on bail on their furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of Court concerned during pendency of this criminal appeal subject to furnishing undertaking that they will cooperate with the hearing of this criminal appeal.

19. Realisation of fine is not stayed.

20. On acceptance of their bail bonds, the trial court shall transmit the photostat copies thereof to this Court for being kept on record of this criminal appeal.

Discussion & Conclusion about stay of conviction

21. So far as the second prayer with regard to stay of conviction of judgment dated 05.03.2024 of the appellants is concerned, it would be apposite to mention following facts :-

21.1. As per disclosure made by the appellant No.1-Dhananjay Singh, he has a criminal history of following 46 criminal cases (36 disposed of cases [as per Chart A] & 10 pending cases [as per Chart B]).

CHART-A
(Decided Cases)

Sl. No.	Case Crime No.	Sections	Police Station	District	Result
1.	628/1991	147, 504, 506, 427 IPC	Line Bazar	Jaunpur	Acquitted on 10.06.1999
2.	601/1992	307/34 IPC	Kotwali	Jaunpur	Acquitted on 01.06.1995
3.	788/1992	25 Arms Act	Line Bazar	Jaunpur	Acquitted on 17.06.1999
4.	204/1993	323, 504, 506 IPC	Line Bazar	Jaunpur	Acquitted on 20.02.2005
5.	55-A/1995	147, 148, 149,	Hasanganj	Lucknow	Acquitted on

		307 IPC			02.08.2001
6.	79/1995	307/34 IPC	Hasanganj	Lucknow	Acquitted on 28.01.2004
7.	314/1995	147, 148, 149, 307 IPC	Hasanganj	Lucknow	Acquitted on 04.05.2000
8.	466/1995	323, 504, 506, 427 IPC	Hasanganj	Lucknow	Acquitted
9.	514-A/1995	147, 148, 149, 307 IPC	Hasanganj	Lucknow	Acquitted on 02.06.2000
10.	9/1996	147, 148, 149, 307 IPC	Hasanganj	Lucknow	Acquitted on 26.07.2000
11.	20/1996	3(1) U.P. Gangster Act	Hasanganj	Lucknow	Acquitted on 19.11.2008
12.	168/1997	147, 148, 149, 307, 120B IPC	Hazaratganj	Lucknow	Acquitted on 31.07.2001
13.	206/1997	302, 34 IPC	Hasanganj	Lucknow	Acquitted on 03.08.2001
14.	302/1997	352, 427, 307 IPC and Section 5 Exp. Act	Aliganj	Lucknow	Acquitted on 16.05.2000
15.	491/1997	302, 304A IPC	Ghazipur	Lucknow	Acquitted on 27.03.2000
16.	230/1998	364, 302, 201, 34 IPC	Hussainganj	Lucknow	Acquitted on 18.02.2000
17.	393/1998	2/3(1) U.P. Gangster Act	Hasanganj	Lucknow	Acquitted on 09.03.2009
18.	612/2000	302, 120-B, 34 IPC and 3(2)5 SC/ST Act	Hazaratganj	Lucknow	Acquitted on 10.05.2010
19.	26-A/2002	147, 148, 435, 452, 323, 504, 506 IPC	Sikrara	Jaunpur	Acquitted on 18.07.2002
20.	224/2002	147, 148, 149, 323, 353, 427, 504, 506 IPC and Section 7 Criminal Law Amendment Act	Baksa	Jaunpur	Acquitted on 07.02.2007
21.	232/2002	3(1) U.P. Gangster Act	Baksa	Jaunpur	Withdrawn on 20.01.2009
22.	293/2002	147, 148, 149, 452, 352 IPC, Section 7 Criminal Law Amendment Act and Section 2/3 Gangster Act	Hussainganj	Lucknow	Withdrawn on 01.10.2003
23.	6/2003	387, 120B IPC and 7 CLA Act	Line Bazar	Jaunpur	Acquitted on 31.01.2007

24.	63/2003	387, 506 IPC	Sikrara	Jaunpur	Acquitted on 25.02.2007
25.	110/2003	3(1) Gangster Act	Line Bazar	Jaunpur	Withdraw on 20.01.2009
26.	394/2008	147, 148, 149, 307, 352, 506 IPC and 7 CLA Act	Sujaanganj	Jaunpur	Final report submitted.
27.	44/2013	302 IPC	Baksha	Jaunpur	Final report submitted.
28.	708/2013	504, 506 IPC	Kotwali	Jaunpur	Final report submitted.
29.	520/2013	376, 377, 506, 323 IPC	Pandav Nagar	Delhi	Acquitted on 19.12.2014
30.	0690/2017	147, 307, 392, 336, 435, 426, 352, 506 IPC	Khuthan	Jaunpur	Acquitted on 09.01.2024
31.	495/2018	384, 467, 468, 471, 506, 507 IPC	Jankipuram	Lucknow	Final report submitted.
32.	0387/2019	307, 506 IPC	Hazaratganj	Lucknow	Final report submitted on 08.09.2023.
33.	254/2020	171G IPC	Saraikhwajha	Jaunpur	Acquitted on 06.12.2022
34.	142/2020	364, 386, 504, 506, 120B IPC	Line Bazar	Jaunpur	Convicted
35.	0181/2020	147, 148, 149, 506, 307, 120B IPC	Alambagh	Lucknow	Name dropped on 05.11.2020
36.	44/2022	127A Representation of People Act	Sikrara	Jaunpur	Acquitted on 02.01.2024

Summary of Chart-A are as under:-

- In 26 cases, appellant No.1 has been acquitted.
- 01 case against the appellant No.1 has been dropped.
- In 05 cases, final/closure report have been submitted.
- 03 cases have been withdrawn by the State Government.
- In 01 case (present matter), appellant No.1 has been convicted.

CHART-B

(Pending Cases of appellant No.1-Dhananjay Singh)

Sl. No.	Case Crime No.	Sections	Police Station	District	Present status
1.	242/2010	302, 109 IPC	Kerakat	Jaunpur	He has been granted bail on 13.03.2012 and trial is pending.
2.	486/2011	3(1) U.P. Gangster Act	Kerakat	Jaunpur	He has been granted bail on 20.03.2012 and trial is pending.
3.	198/2013	109 r/w 302, 326, 324, 120B r/w 307, 370, 374, 201, 202 IPC	Chanakya puri	New Delhi	He has been discharged in Sections 202,109 r/w 302, 326, 324, 120B r/w 307, 370, 374 IPC and has been charged under Section 201 IPC. He has been granted bail on 30.10.2014 and the trial is pending.
4.	0687/2017	147, 148, 149, 307, 323, 332, 353, 504, 506, 34, 427, 435 IPC	Khuthan	Jaunpur	He has been granted bail on 15.04.2019 and the trial is pending.
5.	526/2017	17H/188 IPC and Prevention to Damages to Public Property Act	Kotwali	Jaunpur	He has been granted bail on 15.04.2019 and the trial is pending.
6.	201/2017	188, 353 IPC and 126 Representation of Peoples Act	Baksha	Jaunpur	The case is pending.
7.	445/2020	Section 5(2) of the Official Secret Act and 465 IPC	Vibhuti Khand	Lucknow	The case is pending and is at the summoning stage whereas proceedings have been stayed.
8.	15/2021	302, 307, 34, 120B IPC	Vibhuti Khand	Lucknow	The appellant has been charged under Sections 176, 212 IPC and he has been granted bail on

					21.01.2023 and the trial is pending.
9.	110/2021	188, 269, 270 IPC and Section 3 of Epidemic Diseases Act, 1897	Khuthan	Jaunpur	In this case, investigation is pending.
10.	0334 of 2023	Section 188 IPC and Section 5 of Sound Pollution (Regulation and Control) Rules 2000	Kotwali	Jaunpur	In this case, investigation is pending.

Summary of Chart-B are as under:-

The aforesaid 10 criminal cases of appellant No.1 are still pending, out of which in 07 cases (mentioned at serial nos. 1,2,3,4,5,6 & 8), appellant No.1 is facing trial. In 01 case mentioned at serial No. 7, he has been summoned, but proceedings have been stayed by the High Court. 02 cases (mentioned at serial Nos. 9 & 10) are pending at the investigation stage.

22. During course of the argument, submission on behalf of the State that acquittal of appellant No.1 in all the 28 cases have been done on account of the fact that the prosecution witnesses turned hostile in those cases. The said fact has not been denied on behalf of the appellant No.1 but submitted that once the appellant No.1 has been acquitted, he shall be treated as innocent.

23. Section 389 of the Code of Criminal Procedure empowers the Court to suspend the sentence pending the appeal and for release of the appellants on bail. Section 389 Cr.P.C so far relevant reads as follows:

*"389. **Suspension of sentence pending the appeal; release of appellant on bail** - (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence*

or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail."

24. The cases relied upon by Shri Surendra Walia and Shri Saghir Ahmad, learned Senior Advocates appearing on behalf of the appellants, i.e. Afjal Ansari Vs. State of U.P., (2024)2 SCC 187, Navjot Singh Sidhu Vs. State of Punjab and another, (2007)2 SCC 574 and Sucha Singh Lanagh Vs. State of Punjab, Criminal Appeal No. 40 of 2017 arising out of SLP (Crl.) No. 5 of 2017, decided on 05.1.2017, are distinguishable on the facts of the present case.

25. In the case of **Afjal Ansari (Supra)**, the appellant was having the following criminal history:

(i) Case Crime No. 28 of 1998, which was registered on 16.2.1998 under Section 171-F IPC and Section 135(2) of the Representation of People Act, 1951, police station Nonhara, district Chandauli.

(ii) Case Crime No. 260 of 2001 was registered on 09.8.2001 at police station Mohammadabad, Uttar Pradesh, under Sections 147, 148 and 353 IPC and 3 of Prevention of Damage to Public Property Act, 1984 along with Section 7 Criminal Law Amendment Act.

(iii) Case Crime No. 493 of 2005 was registered under Sections 302, 506, 120-B IPC on 27.6.2005 at police station Mohammadabad, U.P. in which the appellant was named as a conspirator.

(iv) Case Crime No. 589 of 2005 was registered under Sections 147, 148, 149, 307, 302, 404 and 120-B IPC at police station Bhanvar Kol, district Ghazipur on 29.11.2005 for hatching conspiracy.

(v) Case Crime No. 1051 of 2007 was registered under Sections 302, 120-B, 436, 427 IPC and Section 3,4 and 5 of the Explosives Act, 1884 and Section 7 of Criminal Law Amendment Act, 1932.

(vi) Case Crime No. 607 of 2009, under Sections 171 and 188 IPC was registered on 11.4.2009 at police station Mohammadabad, Uttar Pradesh.

(vii) Case Crime No. 18 of 2014 was registered under Sections 171-J, 188 IPC and 121(2) of Representation of People Act, police station Chakarghatta, district Chandauli, U.P. the appellant has been granted bail.

26. In **Afjal Ansari case (Supra)**, the appellant was involved in seven cases, out of which in one case (mentioned at serial No. IV) in which the appellant was accused for hatching conspiracy in the said murder case. The investigation of this case was entrusted to the Central Bureau of Investigation and the trial was subsequently transferred to CBI Court at Rouse Avenue, New Delhi. In this case the appellant was acquitted. In two cases (mentioned at serial Nos. I & VI) which relate to violation of Model Code of Conduct during election period, he has not been summoned, and in two cases (mentioned at serial Nos. III & V) after investigation, his name has been dropped and he has not been charge sheeted. In two cases (mentioned at serial Nos. II & VII) which are of trivial nature involving violation of Model Code of conduct during election period, he has been granted bail.

27. The effect and operation of conviction of Afjal Ansari was suspended by the Hon'ble Supreme Court with certain conditions, one of which was that the appellant Afjal Ansari shall not be entitled to participate in the proceedings of the House. He shall also not have the right to cast his vote in the House or to draw any

perks or monetary benefits.

28. Navjot Singh Sidhu Vs. State of Punjab and another (2007)2 SCC 574 was a case in which the appellant was charged of causing death of a person by inflicting fist blows on head. The trial court acquitted him. Thereafter, he contested election and was declared elected as Member of Parliament. However, on the appeal being filed by the State, the High Court convicted him under Section 304 Part II IPC and sentenced him to three years RI. In view of the order of conviction and sentence passed by the High Court, appellant Navjot Singh Sidhu incurred disqualification under Section 8(3) of the Representation of the People Act, 1951. Instead of filing an appeal against the order of High Court, before the Supreme Court, the appellant-Navjot Singh Sidhu resigned from the membership of Lok Sabha on moral ground and then chose to contest election again. Thereafter, he filed an appeal against the order of High Court before the Supreme Court, which by an interim order suspended the execution of the sentence. In addition to this case, he did not have any case against him.

29. Sucha Singh Langah (Supra), no detailed facts of the case has been given by Hon'ble Supreme Court as the case was pending consideration before the High Court.

30. So far as appellant No. 1, Dhananjay Singh is concerned, it is relevant to note that at present ten cases is still pending against him as mentioned in Chart-B.

31. In K.C. Sareen Vs. CBI, (2001) 6 SCC 584, it was held by Hon'ble Supreme Court that "though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389 (1) of the code, its exercise should be limited to

very exception Cases. It was further held that merely because the convicted person files an appeal to challenge his conviction, the court should not suspend the operation of the conviction and the court has a duty to look at all aspect including the ramifications of keeping such conviction in abeyance."

32. In **Union of India Vs. Atar Singh, (2003) 12 SCC 434**, accused was convicted under Section 409 IPC and Section 13 of Prevention of corruption Act. He filed an appeal before the High Court, which has suspended the conviction solely on the ground that non-suspension of conviction may entail removal of the delinquent government servant from service. On appeal, the Hon'ble supreme Court set aside the order of the High Court by holding that the High Court had mechanically passed the order by suspending the conviction and the discretion ought not to have been exercise by the High Court by passing such an order suspending the conviction.

33. In **State of Maharashtra Vs. Gajanan, (2003)12 SCC 432**, relying on K.C. Sareen (Supra) it was reiterated that only in exceptional cases, the Court should exercise the power of stay of conviction.

34. In **State of Haryana Vs. Hasmat (2004) 6 SCC 175**, it was observed as under:

"Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is that requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspect and the order directing

suspension of sentence and grant of bail should not be passed as a matter of routine. "

35. In **Ravi Kant S. Patil Vs. Sarvabhouma S. Bagali, (2007) 1 SCC 673**, Hon'ble Supreme Court held in paragraph 15 that "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."

36. In **Sanjay Dutt Vs. State of Maharashtra (2009) 5 SCC 787**, petitioner Sanjay Dutt was charged under various sections of Terrorist and Disruptive Activities (Prevention) Act. He was found guilty of offences punishable under Section 3 and 7 read with Sections 25(IA) and 25(IB) of the Arms Act and was sentenced to six years rigorous imprisonment. The petitioner has filed appeal against his conviction and sentence before the Supreme Court. Pending appeal, he was granted bail on 28.2.2007. Thereafter, he has filed application under Section 389 of the code of Criminal Procedure, 1973 praying that execution of the order of conviction and sentence be suspended pending final hearing of the appeal. In the petition, it was mentioned that he belongs to a family which has been in long public service in the country and that the petitioner is now desirous of contesting election of the House of People from Lucknow Parliament Constituency and in view of Section 8(3) of the Representation of People Act, 1951, he has incurred disqualification from contesting the election for becoming a member of either House of Parliament. Therefore, it is prayed that the conviction and sentence of the petitioner be suspended to enable him to contest the election.

Hon'ble Supreme Court while declining his prayer held as under:

"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 Representation of People Act, 1951 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 Cr.P.C. shall be exercised only under exceptional circumstances.

XXXXXXX

" In the present case, no such circumstances are in favour of the petitioner; In view of the serious offence for which he has been convicted by the Special Judge, we are not inclined to suspend the conviction and sentence awarded by the Special Judge in the present case. "

37. In **Shyam Narain Pandey V. State of U.P. (2012) SCC 384**, the appellant Shyam Narain Pandey, who was a Principal of an institution, who was inter alia, convicted for murder. Hon'ble Supreme Court while stressing on the exceptionality of the power to suspend the conviction observed thus:

" In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant , the nature of the crime, manner in which it was committed etc and his rightly held that it is not a very rare and exceptional case for staying the conviction."

38. In **State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar, (2012) 12 SCC 384**, Hon'ble Apex Court after considering a catena of judgement, held as under:

"Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that, the Appellate Court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. The Court has to consider all the facts

as are pleaded by the applicant, in a judicious manner and examined whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done."

39. It is well settled that every case turns on its own facts and circumstances. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect.

40. It is often seen that after conviction of a person who was or is Member of Legislative Assembly or Member of Parliament, used to take a general plea for stay of operation and effect of his conviction that he wants to contest election and in case the judgment of his conviction is not stayed, he will be deprived of his right to contest the election which will result in irreparable loss and injury to him, but this Court feels that each and every case has to be decided on its own merit as well as considering all the surrounding circumstances and other attending factors including gravity of offences, nature of previous criminal history etc. No uniform and straight-jacket formula can be laid down for stay of conviction in all the cases. The parameter and legal position for stay of execution of sentence/bail and stay of conviction are different. Now it is the need of hour to have purity in politics, therefore for staying the judgment of conviction, the Courts should exercise its discretionary power sparingly with caution in a rare and appropriate cases. The purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent person with criminal background from entering into politics and governance. Persons with criminal background pollute the

process of election as they have no reservation from indulging in criminality to win an election. When persons having long criminal history turn into elected representatives and become law maker, they pose a serious threat to the functioning of a democratic system. The very future of our democracy gets imperilled when such offenders masquerade as leaders making a travesty of the entire system. The increasing trend of criminalisation of politics is dangerous and has steadily been eating into the vitals of our democratic polity along with growing corruption of a humongous nature. Considering the facts of this case that the appellant No.1 has secured acquittal in 28 criminal cases due to reasons that witnesses turned hostile as pointed out on behalf of the State, which has not been controverted on behalf of the accused-appellant No.1 and that there is no dispute that at present, 10 criminal cases **(as noted in Chart-B)** are still pending against him, I do not find any good ground, special reason or exceptional case to stay the operation and effect of impugned judgment of conviction dated 05.03.2024 of the appellant No.1-Dhananjay Singh.

41. As a fallout and consequence of above discussion, the prayer for stay of operation and effect of judgment of conviction dated 05.03.2024 of appellant No.1 is refused and is hereby **rejected**.

42. Since prayer for stay of impugned judgment of conviction with regard to appellant No.2 (who is not a political person or government servant) has not been pressed during argument, therefore, his case has not been dealt with in this regard.

43. The further details relating to merits of this case need not be referred to herein since the allegations of the prosecution and the

defence thereto is still open to be urged by the parties at the time of final hearing of this case.

44. The application of the appellants under Section 389(1) Cr.P.C. stands disposed of.

In re : Criminal Appeal

1. Trial Court record has been received.
2. Office is directed to prepare paper book.
3. Let this matter be listed before the appropriate Bench for final hearing after preparation of paper book.

Dated: 27.4.2024

Ishrat