

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.17232 of 2021
In Criminal Appeal No.S-4336-SB of 2016

Reserved on: October 12, 2021
Date of Decision: *October 25, 2021*

Yadwinder Singh @ Yadu

..... APPLICANT-APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

...

CORAM: HON'BLE MR. JUSTICE GURMEET SINGH SANDHAWALIA
HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. S.S. Narula, Advocate and Mr. G.S. Brar, Advocate,
for the applicant.

Mr. Gaurav Garg Dhuriwala, Senior Deputy Advocate
General, Punjab.

Mr. ADS Sukhija, Advocate, for the complainant.

[The proceedings are being conducted through Video
Conferencing, as per instructions.]

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Sant Parkash, J

1. Applicant – appellant, Yadwinder Singh @ Yadu, has preferred the present application under Section 389 Cr.P.C. seeking stay of his conviction imposed vide judgment of conviction dated 18.11.2016 passed in FIR No.127 dated 30.06.2002 under Sections 307, 452, 326, 324, 323, 148, 149 IPC registered with Police Station, City Khanna, District Ludhiana, whereby the applicant - appellant alongwith co-accused has been

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convicted and sentenced to undergo rigorous imprisonment for a period of three years alongwith fine under the provisions of IPC as detailed in order of conviction dated 18.11.2016.

2. Succinctly, the present FIR has been registered on the basis of statement of complainant – Azadwinder Singh (PW-2), who was declared fit to make statement on 30.06.2002, by Dr. Beant Singh Bhatia (PW-8) vide his opinion EX.PW-4/D, pursuant to an application moved by ASI Baldev Singh (PW-4), Police Station, City, Khanna. The complainant got recorded his statement to the effect that on 29.06.2002 at about 04.00 pm, when he alongwith Harminder Singh (PW-5) and Rajanjeet Singh was present in his shop, situated at Amloh Road, Yadwinder Singh @ Yadu alongwith co-accused and armed with deadly weapons viz. Kirpans, Iron Rods, Gandasi and Danda, came on Maruti Zen car bearing HR-20F/5521, Esteem car bearing PB-2L/8397 and motor cycle bearing PB-ZLA/5361 and started inflicting injuries to the complainant with a common intention to kill him. The applicant Yadwinder Singh @ Yadu inflicted three danda blows on the back, chest and head of the complainant. The other co-accused also inflicted multiple injuries on the person of the complainant. The complainant was saved by Harminder Singh and Rajanjeet Singh from the clutches of the accused. The complainant stated that motive of the incident was that Rupinder Pal Singh (one of the assailants) wanted to extract money from him. As per the MLR dated 29.06.2002, out of 18 injuries on the person of complainant – Azadwinder Singh, Injury Nos.2 to 6, 8 & 10 were shown to be inflicted with sharp edged weapons. Injury Nos.1 to 6, 8 and 10 to 13 were advised for X-ray. On the receipt of X-ray report, injury Nos.2 and 10 were declared to be grievous.

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3. Investigation was set in motion. At the first instance, applicant – appellant, Yadwinder Singh @ Yadu was found to be innocent and his name was put in column No.2 of final report. Challan was presented against six accused. Copies were supplied. Offence under Section 307 IPC having been exclusively triable by the court of Sessions, the case was committed to the Sessions Judge, Ludhiana, vide order dated 23.12.2003. Charges were framed by the court of Additional Sessions Judge, however, in the interregnum, Rupinder Singh @ Gandhi and Randip Singh @ Nannu, died; and accused Jagpal Singh and Jagjit Singh were declared Proclaimed persons. As such, co-accused Inderjeet Singh and Surinder Pal Singh were tried at the first instance.

4. During the course of trial, prosecution moved an application under Section 319 Cr.P.C. for summoning the applicant – appellant. The application was accepted vide order dated 05.02.2013 and the present applicant was ordered to be summoned for facing trial alongwith co-accused. Charges were re-framed against all the three accused. The applicant – appellant approached this Court by filing CRR No.1901 of 2013 titled 'Yadwinder Singh @ Jaddu Vs. State of Punjab' wherein vide order dated 01.07.2013, operation of the order dated 05.02.2013, whereby the application moved by the prosecution under Section 319 Cr.P.C. for summoning the applicant – appellant had been accepted, was stayed. Later on, amended charges were again framed on production of co-accused Jagpal Singh who was lodged in Nabha Jail in case FIR No.70 dated 13.06.2007, registered with Police Station, Amloh and *de novo* trial commenced.

5. Prosecution examined as many as ten witnesses before closing its evidence. Incriminating material appearing in prosecution

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evidence was put to accused under Section 313 Cr.P.C. wherein the applicant – appellant took up the plea of *alibi* that he was studying in Panjab University, Chandigarh. Three witnesses were examined in defence.

6. After appreciating the evidence and hearing counsel for the parties, the present applicant – appellant alongwith co-accused Inderjeet Singh, Surinder Pal Singh and Jagpal Singh, vide judgment dated 18.11.2016, was held guilty for commission of offence under Sections 148, 452, 326 read with 149 IPC and Section 324 read with Section 149 IPC and under Section 323 IPC and sentenced vide order dated 18.11.2016. Sentence imposed upon the present applicant – appellant reads as under:-

“U/S 148 IPC	Rigorous Imprisonment for one year with fine of Rs.1,000/- in default of payment of fine, to undergo further R.I for 15 days.
U/S 452 IPC	Rigorous Imprisonment for two years with fine of Rs.2,000/- in default of payment of fine, to undergo further R.I for one month.
U/S 326 IPC R/W Section 149 IPC	Rigorous Imprisonment for three years, with fine of Rs.5,000/- in default of payment of fine, to undergo further R.I for three months.
U/S 324 IPC R/W Section 149 IPC	Rigorous Imprisonment for two years with fine of Rs.3,000/- in default of payment of fine, to undergo further R.I for two months.
U/S Section 323 IPC	Rigorous Imprisonment for one year with fine of Rs.1,000/- in default of payment of fine, to undergo further R.I for 15 days.”

Aggrieved by the aforesaid judgment of conviction and order of sentence, the present applicant– appellant has approached this Court by filing Criminal Appeal No.S-4336-SB of 2016 wherein the instant application viz. Criminal Miscellaneous No.17232 of 2021 seeking stay of his conviction has been moved.

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7. Learned counsel for the applicant has submitted that the applicant being a politically exposed person wants to contest the upcoming general elections of Punjab Vidhan Sabha from Khanna constituency and due to conviction of three years awarded to him, he will not be able to contest the same. He was found innocent during the course of investigation and kept in column No.2 but had been summoned under Section 319 Cr.P.C., that too, after 11 years of registration of FIR. No grievous injury has been attributed to him. Moreover, his conviction under Section 326 IPC is not sustainable and at the most, conviction can be under Section 325 IPC.

8. Learned counsel has further contended that the trial court has not appreciated the plea of *alibi* qua the applicant as he was in the company of his friends while studying in Panjab University, Chandigarh, on the day of occurrence. To prove the plea of *abili*, he has examined two respectable witnesses i.e. DW1 – Harmanjit Singh Deol, JMIC and DW2 – Major Amandeep Singh.

9. Learned counsel for the applicant has relied upon the judgment rendered by the Supreme Court in **Navjot Singh Sidhu vs. State of Punjab & another, RCR (Criminal) 836** to contend that for staying or suspending the order of conviction, it is not necessary to minutely examine the merits of the case. Accordingly, learned counsel has further submitted that the present application deserves to be allowed and conviction of the applicant – appellant is liable to be stayed.

10. *Per contra*, learned counsel for the State, while opposing the prayer made in the application, has submitted that as many as 14 cases have been registered against him. A representative of the people should be of

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some moral character. Therefore, a person who has been convicted has no moral right to contest the elections.

11. Learned counsel for the complainant has also opposed the prayer made in the application and reiterated the submissions made by the State counsel. Learned counsel has submitted that stay of conviction should be ordered only in rare of rarest cases. Seeking stay of conviction on the ground of contesting elections is not an exceptional circumstance.

12. We have heard learned counsel for the parties and perused the record.

13. Admittedly, the applicant – appellant had earlier sought the relief claimed in the present application, by filing Criminal Miscellaneous No.38965 of 2016 which was dismissed as withdrawn vide order dated January 12, 2017 on the ground that the applicant did not want to contest the election.

14. The applicant – appellant was summoned under Section 319 Cr.P.C. to face trial. It is clear from the record that the applicant was a member of an unlawful assembly. As many as 18 injuries were inflicted on the person of complainant. As discussed above, injury Nos.2 to 6, 8 & 10 were shown to be inflicted with sharp edged weapons. Injury Nos.1 to 6, 8 and 10 to 13 were advised for X-ray. On the receipt of X-ray report, injury Nos.2 and 10 were declared as grievous. Further, the seat of injuries clearly depicts that such injuries on the person of complainant, in the ordinary course of nature, may prove fatal. The main injuries read as under:-

- “(i) Lacerated wound 8x1 cm on the occipital region of skull, scalp deep. Fresh bleeding present advised x-ray.
- (ii) Three incised wound 1cm, 1.5cm, 1.5cm, skin deep in a linear line on dorsal surface of left hand 1cm below

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knuckle along with diffuse swelling advised x-ray left hand.

- (iii) Incised wound 6x1cm into muscle deep on the right forearm 4cm below elbow on its anterior surface advised x-ray.
- (iv) Incised wound 6.1cm on the right hand in web between thumb and index finger advised x-ray.
- (v) Incised wound 1.5x2cm on palmer surface base of right index finger advised x-ray.
- (vi) Incised wounds three in number, 1x5cm into skin deep, 2cm below right elbow posterior surface, 1.5x5cm into skin deep on the middle, 1x5cm into lower third, advised x-ray.
- (vii) Lacerated wound 1x5cm on the anterior surface of right leg in its lower third.
- (viii) Incised wound 5x1.5cm into muscle deep on the posterior surface of the left arm just above elbow advised x-ray.
- (ix) Lacerated wound 3x5cm, 2cm above injury no.8.
- (x) Incised wound 2.5x5cm, 6cm below elbow advised x-ray posterior surface.
- (xi) Radish contusions multiple in number on the left arm forearm and shoulder of variable sizes 12x2cm to 3x2cm advised x-ray.
- (xii) Multiple contusions of variable sizes on the back of trunk and abdomen radish in colour sizes varies found 3x2cm to 15x2 cm advised x-ray.
- (xiii) Abrading contusion 10x1.5cm, 5cm below left scapula advised x-ray.
- (xiv) Two linear abrasion 20x21cm on anterior of chest and abdomen.
- (xv) Multiple linear abrasion on the back six in number variable sizes 3cm and 5cm on the left supra scapular, 6cm on the neck, 4cm on the right supra scapular region, 8cm and 3cm on the lumbar region on the right side.

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- (xvi) Multiple radish contusion on the front of the chest and abdomen.
- (xvii) Leanier abrasion 1.5cm on the left side of the forehead.
- (xviii) Small lacerated wound on the right ear pinna.”

15. It is a settled proposition that relief of conviction cannot be claimed as a right before the court of law. It depends on the discretion of the court to stay the conviction in a judicious manner after considering the facts and circumstances of the cases. As such, discretion has always to be exercised by courts judiciously and not according to whim, caprice and there is no exceptional circumstance to exercise discretionary power. It may be seen whether there is any provision which may enable the Court to suspend the order of conviction as normally what is suspended is the execution of the sentence. Sub-section (1) of [Section 389](#) says that 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. This Sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. This question has been examined in considerable detail by a Three Judge Bench of the Supreme Court in [Rama Narang v. Ramesh Narang & Ors.](#) (1995) 2 SCC 513, wherein it has been held :-

"19. That takes us to the question whether the scope of [Section 389\(1\)](#) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in [Section 267](#) of the Companies Act, we see no reason why we should give a narrow meaning to [Section 389\(1\)](#) of the Code to debar the court from

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granting an order to that effect in a fit case. The appeal under [Section 374](#) is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under [Section 374](#) of the Code the appeal is against both the conviction and sentence and, therefore, we see no reason to place a narrow interpretation on [Section 389\(1\)](#) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under [Section 482](#) of the Code if the power was not to be found in [Section 389\(1\)](#) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under [Section 482](#) of the Code if it was confronted with a situation of there being no other provision in [the Code](#) for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by [Section 267](#) of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay or suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company."

The aforesaid view has recently been reiterated and followed by another Three Judge Bench in [Ravi Kant S. Patil v. Sarvabhuma S. Bagali JT](#) 2006 (1) SC 578. After referring to the decisions on the issue, viz., [State of Tamil Nadu v. A. Jaganathan](#) (1996) 5 SCC 329, [K.C. Sareen v. C.B.I., Chandigarh](#) (2001) 6 SCC 584, [B.R. Kapur v. State of T.N. & Anr.](#) (2001) 7 SCC 231 and [State of Maharashtra v. Gajanan & Anr.](#) (2003) 12 SCC 432, this Court concluded :-

"All these decisions, while recognizing the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."

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The Court also observed :-

"11. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative....."

The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case. Taking into consideration the legal proposition, the applicant – appellant has failed to draw attention of the Court towards any circumstance where this Court can grant stay of conviction.

16. It is not in dispute that the applicant – appellant is a politically exposed person and intends to contest upcoming assembly elections in Punjab. A representative of the people should be a man of clear antecedent but to the contrary, there were as many as 14 criminal cases registered against him, out of which he is under trial in two FIRs viz. FIR No.45 dated 07.04.2020, under Sections 295, 323, 506, 34 IPC, Police Station, Khanna; and FIR No.72 dated 31.03.2004, under Sections 341, 323, 506, 148, 149 IPC, Police Station, Division No.5, Civil Lines, Ludhiana. For ready reference, detail of 14 FIRs need to be reproduced which is as under:-

Sr. No.	Registered Case Details	Status of Case
1	FIR No.147 dated 28.04.2001, U/s 452, 323, 147, 149 IPC Police Station Sector-11, Chandigarh	Acquitted on 21.03.2012
2	FIR No.91 dated 08.03.2002, U/s 307, 506, 324, 148, 149 IPC Police Station Sector-11, Chandigarh	Acquitted on 17.08.2006
3	FIR No.359 dated 28.08.2002, U/s 307, 323, 324, 148, 149 IPC Police Station Sector-11, Chandigarh	Acquitted on 23.10.2006
4	FIR No.213 dated 19.04.2003, U/s 323, 324, 506, 34 IPC Police Station Sector-11, Chandigarh	Acquitted on 09.03.2011
5	FIR No.152 dated 06.07.2004, U/s 307, 506, 294 IPC and U/s 25 Arms Act, Police Station, Khanna.	Acquitted on 17.03.2008
6	FIR No.39 dated 23.02.2004, U/s 307, 506, 341, 148, 149 IPC Police Station Sadar Khanna.	Acquitted on 23.07.2005
7	FIR No.184 dated 11.10.2005, U/s 324, 148, 149 IPC Police Station Samrala	Acquitted on 23.10.2006
8	FIR No.285 dated 03.12.2003, U/s 452, 427, 506, 148, 149 IPC Police Station Sadar Khanna.	Pardoned by Hon'ble High Court on 04.01.2012 in Appeal on basis of compromise.
9	FIR No.96 dated 24.05.2013, U/s 307, 120-B, 148, 149 IPC and U/s 25/27/51/59 Arms Act, Police Station Khanna.	Acquitted on 27.03.2014
10	FIR No.26 dated 02.02.2014, U/s 302, 37, 148, 149, 120-B IPC and 25/27/54/59 Arms Act, Police Station City Khanna.	Declared innocent vide judgment dated 19.01.2018 passed by Ld. Court of ASJ, Ludhiana.
11	FIR No.45 dated 07.04.2020, U/s 295, 323, 506, 34 IPC Police Station Khanna	Under Trial
12	FIR No.126 dated 04.08.2001, U/s 341, 506, 148, 149 IPC Police Station Sadar Khanna	Acquitted on 16.07.2013
13	FIR No.52 dated 18.04.2002, U/s 307, 506, 120-B and Sections 25/27/54/59 Arms Act, Police Station City Khanna	Untraced report filed on 21.11.2003 which is yet to be approved by the Ld. Court
14	FIR No.72 dated 31.03.2004, U/s 341, 323, 506, 148, 149 IPC Police Station Division No.5, Civil Line, Ludhiana	Under Trial

Registration of criminal cases against the applicant shows his character, antecedents and mental propensity. Though he has been acquitted in most of the cases but the registration of so many cases would lead an irresistible and

unerring conclusion that he is certainly not entitled to the relief claimed. We apprehend that if the order of conviction is stayed, there is every possibility and likelihood that he may indulge in similar activities and may cause obstructions in the coming elections.

17. Reliance was placed on **Navjot Singh Sidhu (supra)** by learned counsel for the applicant. In the said case, the appellant had resigned from the membership on moral ground after his conviction in order to seek mandate of the people again. However, in the present case, it is not the case of the applicant that he is either a sitting MLA or MP or having some official position. As such, the aforesaid cited judgment is distinguishable in facts and not applicable to the facts of the present case.

18. In view of what has been discussed above as also taking into account the legal proposition, we do not find any merit in the present application and the same is hereby dismissed.

(Gurmeet Singh Sandhawalia)
Judge

(Sant Parkash)
Judge

October 25, 2021

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Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No