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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 08.05.2024
Pronounced on: 10.05.2024

+ **CRL.A. 835/2010 & CRL.M. (BAIL) 746/2024**

DAYA NAND CHANDELA Petitioner

Through: Mr. O.P. Jatav, Mr. Akash
Jatav, Mr. Varun Jain and Mr.
M.K. Gahlaut, Advocates

versus

STATE Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with Mr.
Ripudaman Shahi, Mr. Adesh
Taneja & Ms. Neha,
Advocates with SI Ram
Chander, P.S.: Tilak Nagar.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.****CRL.M. (BAIL) 746/2024 (for suspension of order of conviction
dated 03.06.2010)**

1. By way of instant application under Section 389(1) read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. '), the applicant/appellant is seeking suspension of order of conviction dated 03.06.2010 passed by the learned Special Judge, NDPS, Rohini



Court, Delhi (hereinafter '*learned Trial Court*') in SC No. 181/2006 arising out of FIR bearing no. 969/2003, registered at Police Station Tilak Nagar, Delhi for offences punishable under Section 452/307/34 of the Indian Penal Code, 1860 (*IPC*).

2. Briefly stated, facts of the present case are that on 11.12.2008, at about 4:10 pm, Police Station Tilak Nagar, Delhi had received information regarding an attack on the residence of a Member of the Legislative Assembly ('MLA'). In response, DD no. 13-A Ex. PW-15/A had been recorded, and ASI Ishaq Mohd. had been assigned to the said case. After that, alongside Constable Sunil, ASI Ishaq Mohd. had proceeded to the place of the incident, where they had discovered that the injured/victims had already been taken to DDU Hospital, Delhi. Upon arrival at the hospital, one Sudesh Chandela i.e., PW-2 complainant/victim/injured had informed both police officials that they had loaned a sum of Rs. 50,000/- to an individual named Sufi, who had subsequently absconded without repayment. The complainant/victim had rented the said jhuggi of Sufi. Thereafter, the neighbours of the complainant/victim had informed him and his companions that one Manoj i.e., the co-accused herein had come and he had put a lock on the said jhuggi which had prompted the complainant Sudesh Chandela and his other companion to go to Dayanand Chandela's residence i.e., the present applicant/appellant as co-accused Manoj was his associate. Both of them had then confronted the accused persons regarding the lock, who had explained to them that they also had financial claims against Sufi and



since he had not been paying the said amount, they had locked his jhuggi. During the said conversation, both the parties had heated arguments. Thereafter, the present applicant/appellant i.e., Dayanand Chandela had arrived at the scene in a car and had taken out a sword. Co-accused i.e Nawab had been armed with a sword, while other co-accused persons Manoj and Meghraj had appeared with sticks in hand. Thereafter, as per the allegations Dayanand Chandela had incited violence by shouting '*Maro salo Ko*'. Upon seeing the situation escalate, Sudesh Chandela and his other companions had fled towards the house of the complainant for safety. However, the present applicant/appellant i.e., Dayanand Chandela, along with three other co-accused had followed them into their house and thereafter Dayanand Chandela had struck Sudesh Chandela/injured/victim with a sword blow, which Sudesh had somehow managed to block with his right hand. Further, as per the allegations, co-accused Nawab had also attacked him with a sword, while co-accused Manoj and Meghraj had assaulted the complainant/victim/injured with sticks. Furthermore, it is the case of the prosecution that the accused persons had also targeted Sudesh's father Harpal i.e., PW-4, his uncle Ram Gopal i.e., PW-3, and his brother Ravinder i.e., PW-1, who had intervened to protect the complainant/injured/victim i.e., Sudesh Chandela. Thereafter, the present FIR had been registered. After conclusion of trial, the accused persons namely Nawab, Manoj, Megh Raj and the present applicant Dayanand Chandela were convicted *vide* judgment dated 03.06.2010 by the learned Trial Court.



3. Learned counsel for the applicant argues that the applicant is seeking the relief *qua* suspension of order of conviction dated 03.06.2010 on the grounds that the present applicant, aged about 70 years, is a distinguished public figure with a long-standing record of dedicated political services rendered to the State of Delhi and at present, the applicant wishes to contest the Lok Sabha Elections 2024 to be held in Delhi on 25.05.2024, and the last date for filing of nomination for contesting Lok Sabha Elections in Delhi is 06.05.2024. It is further submitted that the present applicant has deep roots in the society and has clean antecedents and has never been convicted in any other case besides the one which is subject matter of the present appeal.

4. Learned counsel further submits that the political journey of the applicant had begun in the year 1993. It is stated that between the period 1997 to 2003, he had remained M.C.D. Councilor in Delhi. In the year 2003, the applicant had won the Delhi Assembly elections from Vishnu Garden assembly constituency. He had thereafter won the election of legislative assembly from Rajouri Garden assembly constituency in the year 2008. In the year 2013, the applicant had submitted his nomination forms for contesting the Delhi Assembly election but his nomination forms were cancelled by the Returning Officer on account of judgment dated 03.06.2010 and the order of sentence dated 08.06.2010. It is further submitted that the present applicant has suffered disqualification because of the order of conviction dated 03.06.2010 and he cannot contest the upcoming Lok



Sabha General Elections, 2024 in view of the bar imposed by Section 8(3) of the Representation of the People Act, 1951.

5. Learned counsel for the applicant submits that substantial legal and factual questions are involved in the present appeal that warrants careful consideration of this Court, and the same may take time for final disposal. Reliance on behalf of the applicant has been placed on the judgment of Hon'ble Apex Court in *Ajfal Ansari v. State of Uttar Pradesh* (2024) 2 SCC 187 and on the judgment of this Court dated 08.04.2024 in the case titled as *Dilip Ray v. Central Bureau of Investigation*, CRL.A. 533/2020. Thus, it is argued that it would be in the interest of justice that the applicant is thus allowed to contest the upcoming Lok Sabha elections by suspending his conviction in the present case.

6. *Per contra*, learned APP for the State, strongly opposes the present application filed by the applicant and submits that the applicant had earlier filed two applications for suspension of order of conviction dated 03.06.2010 i.e., one in the year 2015 which had been dismissed by this Court *vide* judgment dated 15.01.2015, and the other application in the year 2019 which had again been dismissed by this Court *vide* judgment dated 10.01.2020. It is further argued that the learned Trial Court has rightly convicted the appellant and appreciated the evidence in detail, and there are no grounds at this stage to come to the conclusion that the appellant is innocent and the appeal against the order of conviction is going to result in acquittal only. It is further argued that the evidence on record has



already proved the guilt of the applicant and therefore, no grounds for suspension of the conviction are made out. Thus, merely because the present applicant is desirous of contesting the elections that, by itself, would not be a ground sufficient to exercise the power to suspend the conviction of the present applicant. Therefore, it is prayed that the present application be dismissed.

7. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned APP for the State and has perused the material placed on record.

8. Before adjudicating the present application, this Court at the outset notes that *vide* judgment dated 15.01.2015, the Predecessor Bench of this Court had dismissed a similar application moved by the present applicant seeking suspension of conviction for the purpose of contesting elections *vide* a detailed reasoned order. It shall be appropriate to first take note of the observations recorded in the said judgment, and the relevant paragraphs of the same are reproduced hereunder:

“ 30. Having heard learned counsel for the parties and considered the submissions in the light of the materials relied upon by the appellant and the respondent, and the decisions cited before me, I am of the view that the present application has no merit. I am, therefore, not inclined to suspend the conviction of the appellant. As noticed by the Supreme Court in Navjot Singh Sidhu (*supra*), at this stage, the Court is not required to delve into the merits of the case in detail, and only the broad features of the case need to be examined.

31. I am, *prima facie*, of the view that the discrepancies pointed by counsel for the appellant in the prosecution evidence are of a minor nature and do not shake the case of



the prosecution and the findings returned by the trial court. While dealing with this argument, the trial court had observed:

‘40. There are certain contradictions in the testimonies of the witnesses, but it is to be taken note that witnesses have been examined after a long gap and minor discrepancies here and there are bound to occur. It is also important to note that every person has different way of seeing, noticing and registering the facts, which they see and perceive and then reproduction of the same. Here, the four persons of the family sustained injuries and all of them were not in the same situation. They noticed whatever was happening to them and in front of them. It is not possible that every person was seeing and noticing everything every time, therefore, certain contradictions were bound to occur. The three witnesses are consistent on the point that accused Dayanand Chandela brought the sword from inside the house. Though, PW2 was confronted with his statement recorded by the police, which is Ex. PW2/ A, wherein it is mentioned that accused came there in a car with the sword. In my opinion, it is not a major contradiction as to whether he was carrying the sword or brought the same from his house, the major issue is that who attacked whom and where. All the four witnesses are consistent that accused persons entered their house and attacked them. Photographs in this regard are also on the record, which have been proved as Ex. PW18/16 to Ex. PW18/30. The photographs show the veranda of the house of the accused and also inside the house of the complainant and blood is lying all over. As discussed above though, the defence is trying to make out a case of previous enmity, but there is no such evidence. There is no reason on record to show that PW 1 to PW4 would depose falsely against the accused persons and would let off the actual culprits go scot free. There are exaggerations also in the testimony of PW4 that PW2 sustained 27 injuries, but in my opinion, when



a person himself is being beaten indiscriminately and he saw his son being attacked with sword, such contradictions are not of much importance. Injuries on the person of PW2 has been proved as grievous caused by blunt and sharp edged weapon, which also supported the testimony of PW2. PW2 has stated that he was attacked by Dayanand Chandela as well as Kunwan Nawab with the swords and by other two accused persons with lathies. They also stated that Dayanand Chandela exhorted that "Mara sale ko" and PW3 and PW4 also told the same words, which according to them, were exhorted by Dayanand Chandela. PW1 also stated that Kunwar Nawab also exhorted, but they were confronted with their statements recorded u/s 161 Cr.P.C. All the four witnesses have corroborated each other on the major points besides minor contradictions, which in my opinion are not going to the root of the case. So far as the non examination of Sufi and Deepak are concerned, in my opinion, that is not fatal to the prosecution case as they were not the eyewitnesses to the incident. So far as the non examination of the public witnesses is concerned, police witnesses stated that no public person wanted to be involved in a dispute of families, therefore, they do not come forward. So far as the discrepancies in the site plan is concerned, that in my opinion, though important, but on this ground only, the entire case of the prosecution cannot be thrown out. IO should have taken care to prepare the correct site plan of the scene of occurrence, which has not been done. It is well-settled principle of law that negligence of IO is not fatal in every case".

32. The alibi of the appellant- that he was in the zonal office of MCD, Rajouri Garden was disbelieved by taking into account the statement of PW-4 that the appellant was in the said office for about 30 minutes and that he had left the office at around 3:45 p.m. The trial court observed that the place of the incident was not far from the M.C.D. office. PW-1 to PW-4 were consistent that the appellant had brought the sword from inside the house. The said



witnesses had deposed that the police had made a wrong recording to the effect that the appellant had come armed with the sword from the car itself, even though they had correctly narrated the sequence of events to the police. The reliance placed upon the use of the mobile phone aforesaid allegedly by the appellant was disbelieved, since the said mobile phone connection is in the name of DW-7. The aspect of non-recovery of the sword, i.e. the weapon of offence was considered and rejected, since the complainant and the other witnesses had supported the prosecution case.

33. A perusal of the aforesaid discussion would show that, on facts, the present case is starkly different from that dealt with by the Supreme Court in Navjot Singh Sidhu(supra).

34. Therefore, having considered the pros and cons, I am not satisfied that a case is made out for grant of an order for the suspension/ stay of conviction. **It does not appear to be a case of exceptional circumstances where the failure to stay of conviction would lead to injustice to the appellant. As noticed by the Supreme Court in Navjot Singh Sidhu (supra), grant of stay of conviction is not a rule, but an exception to be resorted to in rare cases depending on the facts of each case. Pertinently, the last time that the appellant contested the election was in the year 2008. Even though elections were held in Delhi for election of Members to the Legislative Assembly even thereafter, the appellant did not so contest and did not express any desire to contest the elections.**

35. For all the aforesaid reasons, I find no merit in this application and dismiss the same, being meritless”.

(Emphasis supplied)

9. Thereafter, the applicant had filed another application in the year 2019 seeking suspension of order of conviction dated 03.06.2010 passed by the learned Trial Court. However, the same



was again rejected by this Court *vide* judgment dated 10.01.2020. The relevant portion of the same is extracted hereunder:

“...15. Coming to the present case, this Courts of the opinion that Ld. Trial Court has given a detailed and reasoned finding. It has discussed the evidence of the witnesses in detail. It has disbelieved alibi of appellant. Perusal of judgment of Ld. Trial Court reveals that it has dealt with-the aspect of contradictions appearing in the statement of witnesses. This Court is also of the opinion that prima facie the contradictions pointed out by Ld. Sr. counsel are minor in nature and do not go to the root of prosecution version. This Court does not want to go minutely into the details of the evidence as may prejudice either of the parties. At this stage, there are prima facie no reasons to hold that the appeal of the appellant will result in acquittal only.

16. In view of the above discussion, this Court is of the opinion that it is not a case where this Court should stay the conviction. Thus, in view of the law laid down by the Hon'ble Supreme court in Sanjay Dutt's case (supra), and in view of the detailed and reasoned judgment given by Ld. Trial Court and the detailed judgment of Coordinate Bench of this Court dt. 15.01.2015 refusing to stay the conviction of the-appellant so that he could have contested the elections in the year 2015, no grounds are made out for suspension of the conviction so as to allow him to contest the forthcoming elections to be held in February, 2020. However, it is made clear that nothing stated herein will tantamount to opinion of this Court on the merits of the appeal. The applications are, therefore, dismissed”.

(Emphasis supplied)

10. This Court further notes that as per records of the case, the present applicant had moved an application under Section 482 of Cr.P.C for early hearing of the appeal before this Court in the year



2020, since as per his submissions, he was willing to contest the then forthcoming Delhi Legislative Assembly Elections in the month of January, 2020. However, the said application was dismissed as it was withdrawn by the applicant himself *vide* order dated 17.01.2020.

11. The grievance of the applicant is that he has been convicted for offences punishable under Sections 452/307/34 of IPC by the learned Trial Court and has been sentenced to undergo imprisonment for a period of three years *vide* order of conviction dated 03.06.2010 passed by the learned Trial Court. The appeal i.e. CRL.A. 835/2010, preferred by the applicant against the judgment of conviction is pending before this Court, and the applicant is *again* before this Court seeking suspension of conviction on the ground that he has to contest the upcoming Lok Sabha Elections 2024 from Delhi, for which voting is scheduled to take place on 25.05.2024.

12. Learned counsel for the applicant had argued that there is no bar under the law to suspend the conviction of a person in case the circumstances of the case so require, and that non-grant of this relief in this case will cause prejudice to the applicant herein.

13. As far as law on suspension of conviction is concerned, the Hon'ble Apex Court in the case of *Navjot Singh Sidhu v. State of Punjab and Anr.* (2007) 2 SCC 574 has held that the order granting stay of conviction is not a rule but an exception, to be resorted to in a rare case, depending upon the peculiar facts of a case.

14. In *Afjal Ansari v. State of Uttar Pradesh* (2024) 2 SCC 187 the Hon'ble Supreme Court has held as under:



“...15. It becomes manifestly evident from the plain language of the provision, that the appellate court is unambiguously vested with the power to suspend implementation of the sentence or the order of conviction under appeal and grant bail to the incarcerated convict, for which it is imperative to assign the reasons in writing. This Court has undertaken a comprehensive examination of this issue on multiple occasions, laying down the broad parameters to be appraised for the suspension of a conviction under Section 389(1) CrPC. **There is no gainsaying that in order to suspend the conviction of an individual, the primary factors that are to be looked into would be the peculiar facts and circumstances of that specific case, where the failure to stay such a conviction would lead to injustice or irreversible consequences. The very notion of irreversible consequences is centred on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case”.**

(Emphasis supplied)

15. In the present case, the applicant has been sentenced to undergo imprisonment for three years by the learned Trial Court, upon his conviction in the present FIR which was registered for the offences punishable under Sections 452/307/34 of the IPC.

16. This Court has gone through the **role of the present applicant, as mentioned in the impugned judgment and the reasons recorded by the learned Trial Court for convicting the applicant.** *Prima facie*, the record reveals that the applicant was convicted for offence punishable under Sections 452/307/34 of IPC and the learned Trial Court has held, after conclusion of trial, that the present applicant had assaulted the injured/victims with a sword and had caused grave injuries to them, and that the material witnesses had supported the case of the prosecution. One of the offences for which



the applicant has been convicted is Section 307 of IPC i.e., **attempt to murder**.

17. Be that as it may, this Court is of the opinion that it will not be appropriate to delve into a detailed discussion for the purpose of assessing the merits of the appeal at this stage, since that would amount to prematurely adjudicating the main appeal itself, which can prejudice the case of the applicant. However, at this juncture, this Court has to assess the facts of the case in light of legal principles settled by the Hon'ble Supreme Court, to determine as to whether, it would be just and consistent with judicial precedents to suspend the applicant's conviction, in light of the facts and circumstances of this case and the arguments raised before this Court.

18. It is a matter of fact, that the present application moved by the applicant/appellant is his **third application** for suspension of the order of conviction dated 03.06.2010, and the **Predecessor Benches of this Court *vide* detailed judgments dated 15.01.2015 and 10.01.2020, had recorded detailed reasons to dismiss the earlier applications filed by the present applicant**, wherein also, he had sought suspension of order of conviction, that too, on the similar grounds of contesting elections. It is also noteworthy that the **applicant has not challenged or assailed either the order dated 15.01.2015 or 10.01.2020** passed by the Predecessor Benches. In case the applicant was aggrieved by the said orders, he could have approached the Hon'ble Apex Court by way of a Special Leave Petition in case he genuinely wished to contest the elections.



19. Furthermore, this Court also notes that the applicant had moved an application for early hearing of the main criminal appeal on 15.01.2020, again on the same ground i.e. his desire to contest forthcoming elections and thus praying that his appeal be heard and decided finally. However, *vide* order dated 17.01.2020, learned counsel for the present applicant had withdrawn the said application himself. This implies that the present applicant was not interested in getting his appeal against conviction heard expeditiously and thus, the same was withdrawn by the applicant.

20. The applicant is now again seeking suspension of the order of conviction dated 03.06.2010 passed by the learned Trial Court on the ground that he wishes to contest the upcoming Lok Sabha Elections 2024, which as per the applicant, is a fresh ground and a new circumstance, which can be considered by this Court.

21. During the course of arguments, learned counsel for the applicant had relied upon the judgment passed by this Court on 08.04.2024 in case of *Dilip Ray (supra)* for seeking the relief of suspension of conviction. However, the facts and circumstances of the said case and the case at hand are entirely different. In case of *Dilip Ray (supra)*, no similar application seeking suspension of conviction had ever been rejected earlier by this Court. However, as already observed in the preceding discussion, such applications filed by the applicant have been dismissed on two occasions in the past by detailed orders. Even otherwise, each case has to be adjudicated in light of its own facts and circumstances and the applicant cannot



claim relief before this Court on the grounds of parity. Thus, the argument of the learned counsel for the applicant that the present case is similar to that of *Dilip Ray (supra)* is devoid of any merit.

22. This Court is of the considered opinion that if the applicant genuinely wished to contest the upcoming Lok Sabha Elections as he states that he wants to contest as an independent candidate and serve the society, he could have moved the present application much earlier and could have sought early hearing of his appeal in view of the fact that his similar applications on similar grounds were rejected *vide* detailed judgments by this Court twice i.e. in the year 2015 and 2020. On the other hand, though this appeal has been pending before this Court since the year 2010 and the applicant was also aware of the fact that he cannot contest elections due to his conviction in the present case, he could have requested the Court to take his case for final disposal which he did not do and rather himself withdrew his application for early hearing of the appeal.

23. Moreover, the applicant has not approached this Court with clean hands, since he has nowhere disclosed in the present application that on two earlier occasions i.e. in the years 2015 and 2020, similar applications filed by the applicant seeking suspension of conviction on the same grounds had been dismissed by this Court. Furthermore, the similar application moved by the co-accused was also dismissed by this Court in the year 2017. This fact was also not disclosed by the petitioner herein.



24. Therefore, this Court does not find it a fit case to suspend the order of conviction dated 03.06.2010, and that there are no extraordinary circumstances to allow the present application.

25. In view of the above, the present application i.e. CRL.M. (BAIL) 746/2024 stands dismissed.

26. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on the merits of the case.

27. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 10, 2024/ns