CASE DETAILS

AFJAL ANSARI

v.

STATE OF UP

(Criminal Appeal No. 3838 of 2023)

DECEMBER 14, 2023

[SURYA KANT, DIPANKAR DATTA AND UJJAL BHUYAN, JJ.]

HEADNOTES

Issue for consideration: What are the parameters to be considered for the suspension of conviction u/s. 389(1) CrPC; whether the appellant has made out a prima facie case for the suspension of conviction u/s. 389(1) CrPC; and whether conviction of an offence involving 'moral turpitude' can be a valid ground to deny suspension of conviction u/s. 389(1) CrPC.

Code of Criminal Procedure, 1973 – s. 389 (1) – Suspension of conviction –Appellant-member of Parliament, convicted u/s. 3(1) of the Gangsters Act and sentenced to four years imprisonment with a fine of Rupees One lakh by the trial court, and consequent thereto he was disqualified from membership in the Lok Sabha – Thereagainst, the appellant filed an appeal as also an application u/s. 389(1) for suspension of execution of the sentence awarded and his release on bail, during pendency of the appeal, stay of the effect and operation of the judgement passed by the trial court – High Court suspended the sentence and granted bail but rejected the stay on conviction – Correctness:

Held: Per Surya Kant, J (For himself and Ujjal Bhuyan, J) High Court held that there was no cogent evidence to establish that the appellant was indulging in anti-social activities and crimes such as murder or ransom; and that the appellant's role in the old FIR, which stood reference point in the gang chart in the new FIR, had already resulted in his acquittal – Having applied the criteria that conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, carves

Ed. Note: Hon'ble Mr. Justice Surya Kant pronounced judgment on behalf of himself and Hon'ble Mr. Justice Ujjal Bhuyan. Hon'ble Mr. Justice Dipankar Datta pronounced a separate judgment.

out an exceptional situation, warranting an order of stay on his award of conviction, though partially – Potential ramifications of declining to suspend such a conviction are multifaceted – It would deprive the appellant's constituency of its legitimate representation in the Legislature; and the appellant would be disqualified from contesting elections for a period of ten years – Thus, the need to balance the interests of protecting the integrity of the electoral process on one hand, while also ensuring that constituents are not bereft of their right to be represented, merely consequent to a threshold opinion – Conviction awarded to the appellant suspended subject to the given conditions, clarifications and directions – Ghazipur parliamentary constituency not to be notified for bye-election, till the decision of the appellant's appeal by the High Court – Appellant not entitled to participate in the proceedings of the house, would not have the right to cast his vote in the house or to draw any perks or monetary benefits. [Paras 13, 15, 17, 21, 23, 24] **– Held: Per Dipankar Datta, J.(Dissenting)** Allowing a convicted parliamentarian to attend parliamentary proceedings could not only be derogatory to the dignity of the Parliament but also derogatory to the good sense and wisdom of the people who elected such parliamentarian – While recognizing the importance of the electorate's representation, it is necessary to maintain a balance between this right and the enforcement of legal accountability within the democratic framework – The fact that the court is approached by a parliamentarian/legislator, by itself, should not be viewed with such importance and indispensability – Thus, the judgment passed by the High Court does not call for interference – Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986. [Paras 52, 80, 48]

Code of Criminal Procedure, 1973 – s. 389(1) – Suspension of conviction – Essential parameters:

Held: It is evident from the plain language of s. 389(1) that the appellate court is unambiguously vested with the power to issue an order for the suspension of a sentence or an order of conviction during the pendency of an appeal and grant bail to the incarcerated convict, for which it is imperative to assign the reasons in writing – The very notion of irreversible consequences is centered 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 – s. 389(1) should not be interpreted in a narrow manner, in the context of a stay on an order of conviction, when there are irreversible consequences – An

order granting a stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon the facts of a case – However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation. [Paras 10, 11, 15]

Code of Criminal Procedure, 1973 – s. 389 (1) – Suspension of conviction – Conviction of an offence involving 'moral turpitude', if a ground to deny suspension of conviction u/s. 389(1):

Held: While invoking the concept of 'moral turpitude' as a decisive factor in granting or withholding the suspension of conviction for an individual, there is a resounding imperative to address the issue of depoliticising criminality – There has been increasing clamour to decriminalise polity and hold elected representatives accountable for their criminal antecedents - It is a hard truth that persons with a criminal background are potential threats to the very idea of democracy, since they often resort to criminal means to succeed in elections and other ventures – On facts, substantial doubt cast upon the appellant's criminal antecedents along with the veracity and threat posed by these claims, in light of the many FIRs produced in the proceedings – Although 'moral turpitude' may carry relevance within the context of elected representatives, the courts are bound to construe the law in its extant state and confine their deliberations to those facets explicitly outlined, rather than delving into considerations pertaining to the moral rectitude or ethical character of actions – This is especially true when it is solely motivated by the convicted individual's status as a political representative, with the aim of disqualification. [Paras 19, 20]

Judicial Notice – Appellant seeking suspension of conviction u/s. 389(1) CrPC – Appellant not enumerate any material facts regarding irreversible consequences in his application filed before the High Court, seeking the suspension of conviction:

Held: This principle can be traced to the statutory provisions outlined in s. 8 of the Representation of the People Act – High Court or this Court however, while exercising their appellate jurisdictions, well empowered to take judicial notice of these consequences – Code of Criminal Procedure, 1973. [Para 18]

LIST OF CITATIONS AND OTHER REFERENCES

In The Judgment of Surya Kant, J.

Naranbhai Khikhabhai Kachchadia v. State of Gujarat Crl. Appeal No. 418/2016; *Lok Prahari through General Secretary v. Election Commission of India and others* [2018] 12 SCR 169 : (2018) 18 SCC 114; *Lily Thomas v. Union of India* [2013] 10 SCR 1130 : (2013) 7 SCC 653; *Sanjay Dutt v. State of Maharashtra* (2009) 5 SCC 787; *Ravikant S. Patil v. Sarvabhouma S. Bagali* [2006] 8 Suppl. SCR 1156 : (2007) 1 SCC 673 – referred to.

In The Judgment of Dipankar Datta, J.

Rahul Gandhi v. Purnesh Ishwarbhai Modi & Anr. 2023 SCC OnLine SC 929 – distinguished.

Ravikant S. Patil v. Sarvabhouma S. Bagali [2006] 8 Suppl. SCR 1156: (2007) 1 SCC 673; *Rama Narang v. Ramesh Narang & Ors.* [1995] 1 SCR 456 : (1995) 2 SCC 513; *Navjot Singh Sidhu v. State of Punjab* [2007] 1 SCR 1143 : (2007) 2 SCC 574; *Sanjay Dutt v. State of Maharashtra* (2009) 5 SCC 787; *Lily Thomas v. Union of India* [2013] 10 SCR 1130 : (2013) 7 SCC 653; *Lok Prahari through General Secretary S.N. Shukla v. Election Commission of India & Ors.* [2018] 12 SCR 169 : (2018) 18 SCC 114; *Naranbhai Bhikhabhai Kachchadia v. State of Gujarat* Criminal Appeal No. 418/2016; *K.C. Sareen v. CBI* (2001) 6 SCC 584; *State of Maharashtra v. Balakrishna Dattatraya Kumbhar* [2012] 9 SCR 601 : (2012) 12 SCC 384; *Shyam Narain Pandey v. State of U.P* [2014] 8 SCR 923 : (2014) 8 SCC 909; *K. Prabhakaran v. P. Jayarajan* [2005] 1 SCR 296 : (2005) 1 SCC 754; *Lalsai Khunte v. Nirmal Sinha* (2007) 9 SCC 330; K. Anandan Nambiar, In Re AIR 1952 Madras 117; *Public Interest Foundation and others v. Union of India and Another* (2019) 3 SCC 224; *Jyoti Basu v. Debi Ghosal* [1982] 3 SCR 318 : (1982) 1 SCC 691; *Pradeep Kumar Sonthalia v. Dhiraj Prasad Sahu* (2021) 6 SCC 523; *Ashish Shelar v. Maharashtra Legislative Assembly* (2022) 12 SCC 273 – referred to.

Constituent Assembly Debates, Volume 8 (19th May, 1949) – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3838 of 2023.

From the Judgment and Order dated 24.07.2023 of the High Court of Judicature at Allahabad in CRLMA No. 01 of 2023.

Appearances:

Dr. Abhishek Manu Singhvi, C. U. Singh, S. Wasim A. Qadri, Sr. Advs., Jubair Ahmad Khan, Tamim Qadri, Anuroop Chakravarti, Saeed Qadri, Shraveen Kumar Verma, Siddarth Seem, Saahil Gupta, Ms. Udita Singh, Advs. for the Appellant.

K.M. Nataraj, A.S.G., Sharan Dev Singh Thakur, A.A.G., Ms. Ruchira Goel, Siddharth Thakur, Ms. Indira Bhakar, Adit Jayeshbhai Shah, Ajay Singh, Ms. Keerti Jaya, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SURYA KANT, J.

Leave granted.

2. This appeal is directed against the order dated 24.07.2023, passed by the High Court of Judicature at Allahabad **(hereinafter, 'High Court'),** partially allowing the application filed by the Appellant under Section 389(1) of the Code of Criminal Procedure, 1973 **(hereinafter, 'CrPC'),** for the stay on the sentence and conviction, awarded by the Learned Additional Sessions Judge, MP/MLA Court, Ghazipur **(hereinafter, 'Trial Court')** *vide* judgement and order dated 29.04.2023. The High Court, has through the impugned order, suspended the Appellant's sentence and granted him bail but the stay on conviction has been declined.

FACTS:

3. At this juncture, it is imperative to delve into the factual matrix to set out the context of the present proceedings.

3.1. The Appellant is a public representative, having served as a Member of the Legislative Assembly in Uttar Pradesh for five consecutive terms, and as a Member of Parliament for two terms. Until the recent disqualification following the judgment rendered by the Trial Court, the Appellant was the incumbent Member of Parliament for the Ghazipur Constituency, since 2019. The Appellant currently holds various positions, including roles in the Ghazipur Standing Committee on Agriculture, Animal Husbandry, and Food Processing, as well as the Ghazipur District Development Coordination and Monitoring Committee.

3.2. On 19.11.2007, PW-1, who was the Station House Officer at the Mohammadabad Kotwali Police Station, received information from anonymous sources during his routine patrol with regards to the operations of a gang led by one Mukhtar Ansari in the area, who was reportedly involved in various illicit activities such as murder, extortion, kidnapping and other criminal acts, carried out for political gain. It was further informed that the said gang had instilled fear and terror in the public, discouraging everyone from opposing their actions. Based on such information, PW-1 prepared a comprehensive gang chart under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 **(hereinafter, 'UP Gangsters Act')** and obtained necessary approvals from the Police authorities and the District Magistrate of Ghazipur. On the very same day, Case Crime No. 1052/2007 was registered under Section 3(1) of the UP Gangsters Act at the Mohammadabad Police Station in the Ghazipur District of Uttar Pradesh **(hereinafter, 'New FIR')**. This registration emerged from the earlier Case Crime No. 589/2005, **(hereinafter, 'Old FIR'),** which was a murder case, in which the Appellant had been accused of conspiracy but was subsequently acquitted, as explained briefly hereinafter.

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

i. Case Crime No. 28/1998 was registered under Section 171F of the Indian Penal Code, 1860 **(hereinafter, 'IPC')** and Section 135(2) of the Representation of People's Act, 1951 **(hereinafter, 'RPA')**

on 16.02.1998, at Police Station Nonhara, District Chandauli, Uttar Pradesh, for violation of the Model Code of Conduct during the election period. The Appellant has not yet been summoned by the investigating officer or the concerned Court in this case.

ii. Case Crime No. 260/2001 was registered on 09.08.2001, at Police Station Mohammadabad, Uttar Pradesh, under Sections 147, 148 and 353 of the IPC, and Section 3 of the Prevention of Public Properties from Damages Act, 1984 along with Section 7 of the Criminal Law Amendment Act, 1932. The Appellant has since been granted bail in this case.

iii. Case Crime No. 493/2005 was registered under Sections 302, 506, 120B of the IPC on 27.06.2005, at Police Station Mohammadabad, Uttar Pradesh in which the Appellant was named as a conspirator. However, since the Appellant was found to have played no particular role in the subject crime, his name was dropped during the early stages of the investigation and no chargesheet was filed against him.

iv. Case Crime No. 589/2005 was registered under Sections 147, 148, 149, 307, 302, 404 and 120-B of the IPC, at Police Station Bhanvar Kol, District Ghazipur, on 29.11.2005. The Appellant was accused of hatching conspiracy in the said murder case. The investigation of this case was entrusted to the Central Bureau of Investigation **(hereinafter, 'CBI')** and the trial was subsequently transferred to the CBI Court at Rouse Avenue, New Delhi, wherein the Appellant was acquitted. The CBI has filed an appeal challenging the acquittal of the Appellant, but till date no adverse order has been suffered by him. Further, this is the only case mentioned in the gang chart that was prepared and relied upon in the instant case.

v. Crime Case No. 1051/2007 was registered under Sections 302, 120-B, 436, 427 of the IPC and Sections 3, 4 and 5 of the Explosives Act, 1884 and Section 7 of the Criminal Law Amendment Act, 1932. In this case, the name of the Appellant was dropped after it was deduced that he had no role to play in the reported crime. The Appellant was neither chargesheeted

nor summoned by the concerned Trial Court in this particular instance.

vi. Case Crime No. 607/2009 under Sections 171 and 188 of the IPC was registered on 11.04.2009 at Police Station, Mohammadabad, Uttar Pradesh, alleging violation of the Model Code of Conduct during the election period. The Appellant has admittedly not been summoned in this case.

vii. Case Crime No. 18/2014 was registered under Sections 171J, 188 of the IPC and Section 121(2) of the RPA, at Police Station Chakarghatta, District Chandauli, Uttar Pradesh and the Appellant has already been granted bail in this matter.

3.4. Adverting to the New FIR, the Trial Court held the Appellant guilty under Section 3(1) of the UP Gangsters Act and awarded him a sentence of four years of simple imprisonment, along with a fine of Rs. 1,00,000/- (Rupees One Lakh only). Consequently, Notification No. S.O. 1994 dated 01.05.2023 was published by the Lok Sabha Secretariat in the Gazette of India, disqualifying the Appellant from membership in the Lok Sabha, effective from the date of his conviction on 29.04.2023.

3.5. The Appellant thereafter preferred Criminal Appeal No. 5295/2023 under Section 374(2) of the CrPC before the High Court, challenging the judgment and order of his conviction and sentence dated 29.04.2023 **(hereinafter 'First Criminal Appeal')**. He also filed an application under Section 389(1) of the CrPC, seeking *inter alia*, (i) suspension of the sentence awarded by the judgement and order dated 29.04.2023 and his release on bail, during pendency of the First Criminal Appeal; (ii) stay of the effect and operation of the judgement and order dated 29.04.2023; and (iii) stay of realisation of fine during pendency of the appeal.

3.6. As noticed earlier, the High Court has partially allowed the application filed by the Appellant. The execution of the sentence has been stayed and bail has been granted but stay on conviction has been declined. The instant appeal is thus confined to the Appellant's prayer for the stay of his conviction, during the pendency of his Criminal Appeal before the High Court.

CONTENTIONS OF PARTIES

4. We have heard Learned Senior Counsel for the parties at a considerable length and perused the documents brought on record.

5. Dr. Abhishek Manu Singhvi, learned Senior Counsel for the Appellant, argued that the High Court erred in not granting suspension of the conviction, especially in light of the fact that disqualification from membership of the Parliament, leads to irreversible consequences such as: *(a)* the loss of the next six months as Member of the Parliament in the Lok Sabha; and *(b)* disqualification from contesting elections for a total period of ten years. He further contended that such a disqualification would not only result in the Appellant losing his right to represent his constituency but would also rob his constituency of its representation before the Parliament. Learned Senior Counsel also highlighted the infirmities in the impugned order of the High Court in denying stay of conviction, along with the material contradictions in the prosecution case against the Appellant.

6. Dr. Singhvi lent support to his contentions by citing decisions of this Court in ***Naranbhai Khikhabhai Kachchadia v. State of Gujarat***[1] and ***Lok Prahari through General Secretary v. Election Commission of India and others,***[2] among others.

7. Mr. K.M. Nataraj, learned Additional Solicitor General, representing the State of UP, strongly contested the prayer for suspension of conviction on the ground that the Appellant having been convicted under Section 3(1) of the UP Gangster Act, with a sentence of more than two years under the said Act, automatically suffered disqualification by virtue of Section 8 of RPA. He underscored the contention that the stay or suspension of conviction under S. 389(1) of the CrPC is to be granted as an exception and not as a rule. Furthermore, Mr. Natraj vehemently contended that the right to represent or be represented is not a Fundamental Right and the Appellant's case cannot be deemed to be an exceptional or extraordinary circumstance that warrants suspension of conviction. He also relied on multiple decisions of this Court including, ***Lily Thomas v. Union of India***[3] and ***Sanjay Dutt***

1 Crl. Appeal No. 418 / 2016.
2 (2018) 18 SCC 114, para 16.
3 (2013) 7 SCC 653, para 35.

v. State of Maharashtra,[4] to buttress his assertion that the suspension of conviction ought to be done only in rare and exceptional cases.

8. In our considered opinion, the questions that fall for deliberation, are set out as follows:

i. What are the parameters to be considered for the suspension of conviction under Section 389(1) of the CrPC?

ii. Whether the Appellant has made out a *prima facie* case for the suspension of conviction under Section 389(1) of the CrPC?

iii. Whether conviction of an offence involving 'moral turpitude' can be a valid ground to deny suspension of conviction under Section 389(1) of the CrPC?

ANALYSIS

9. We have taken into consideration the Appellant's extensive history of holding various positions of responsibility, along with the allegations that culminated in his conviction and subsequent disqualification from his position as Member of the Parliament in the Lok Sabha.

10. At the outset, it is imperative to delineate the essential parameters that must be meticulously examined to determine whether a case can be made out for suspension of conviction under Section 389(1) of the CrPC. Section 389(1) enjoys upon the Appellate Court, the power to issue an order for the suspension of a sentence or an order of conviction during the pendency of an appeal. It may be thus of paramount importance to scrutinise the precise language of Section 389(1) of the CrPC, which is articulated as follows:

> *"S. 389(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."*

11. It becomes manifestly evident from the plain language of the provision, that the Appellate Court is unambiguously vested with the power

4 (2009) 5 SCC 787, para 12.

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) of the 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.[5] The very notion of irreversible consequences is centered on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case.

12. Turning to the case in hand, the Appellant was convicted on the basis of a gang chart that hinged solely on an Old FIR, where the Appellant had already been acquitted *vide* judgement dated 03.07.2019. Thereafter, the New FIR was registered, in which the Appellant had been convicted by the Trial Court under Section 3(1) of the UP Gangster Act. The sequence of events, beginning from the registration of the New FIR until the rejection of the Appellant's plea for suspension of conviction by the High Court, is beset with some fundamental misconceptions and, therefore deserves closer legal scrutiny.

13. Upon careful consideration of the judgement of the Trial Court and the order passed by the High Court, it appears to us that, *firstly*, the impugned order suggests that there is no cogent evidence to establish that the Appellant has been indulging in anti-social activities and crimes such as murder or ransom. *Secondly*, the Appellant's role in the Old FIR, which stood as the singular reference point in the gang chart in the New FIR, had already resulted in his acquittal. *Thirdly,* the impugned judgment also indicates the absence of corroborative evidence supporting the contention that the Appellant had been responsible for influencing witnesses in retracting their statements. *Lastly*, the High Court in its impugned order has meticulously highlighted that in the various FIRs that had been registered against the

5 Ravikant S. Patil v. Sarvabhouma S. Bagali, (2007) 1 SCC 673, para 15 and 16.5.

Appellant, either he was not chargesheeted or the investigating agencies had exonerated him.

14. The High Court has further held that owing to the age of the Appellant and the extensive backlog of pending cases, the prospects of a prompt hearing of the First Criminal Appeal were low. It thus came to the conclusion that the refusal to suspend the sentence might render the very appeal otiose. Although the High Court stayed the execution of the sentence and granted bail to the Appellant, it refused to suspend the conviction itself. The High Court justified such a recourse, after making reference to a multitude of judgments from this Court. While the impugned judgment remains largely sound in its approach to affording relief in terms of bail and staying the sentence, we are unable to agree, partly, with its approach in declining the suspension of conviction, for those very reasons.

15. This Court has on several occasions opined that there is no reason to interpret Section 389(1) of the CrPC in a narrow manner, in the context of a stay on an order of conviction, when there are irreversible consequences. Undoubtedly, ***Ravikant Patil v. Sarvabhouma S. Bagali,***[6] holds that an order granting a stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon the facts of a case. However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation. Having applied the specific criteria outlined hereinabove to the present factual matrix, it is our considered view that the Appellant's case warrants an order of stay on his award of conviction, though partially.

16. It remains uncontested that the foundation of the New FIR, which is the origin point of the present proceedings, rests solely on a general statement and involved the rekindling of the Old FIR, in which the Appellant had already been acquitted. Though the aforementioned gang chart projects the Appellant as a repeat offender, the fact remains that he has not been convicted in any prior case, apart from the case presently under consideration. In this context, the detailed circumstances elaborated

6 (2007) 1 SCC 673, para 15.

hereinabove, serve as compelling reasons to advocate for the suspension of the Appellant's conviction and the consequent disqualification.

17. We say so primarily for the reason that the potential ramifications of declining to suspend such a conviction are multifaceted. On the one hand, it would deprive the Appellant's constituency of its legitimate representation in the Legislature, since a bye-election may not be held given the remainder tenure of the current Lok Sabha. Conversely, it would also impede the Appellant's ability to represent his constituency based on the allegations, the veracity whereof is to be scrutinised on a re-appraisal of the entire evidence in the First Criminal Appeal pending before the High Court. This would potentially lead to *de facto* incarceration of the Appellant for a period of four years under the UP Gangsters Act and an additional six-year disqualification period, even if he is eventually acquitted, which would effectively disqualify him from contesting elections for a period of ten years.

18. It is essential to emphasize that while the Appellant did not enumerate any material facts regarding irreversible consequences in his application filed before the High Court, seeking the suspension of conviction, this principle can be traced to the statutory provisions outlined in Section 8 of the RPA. The High Court or this Court however, while exercising their Appellate jurisdictions, are well empowered to take judicial notice of these consequences. Additionally, the Respondent also does not contest the fact that if the conviction is not stayed, the Appellant would not only face disqualification as a Member of the Eighteenth Lok Sabha but would also incur disqualification to participate in future elections for Parliamentary or State Legislative seats. Taking into consideration the consistent legal position adopted in this regard, the severity of these outcomes underscores the urgency and gravity of the matter at hand.

19. In this context it is crucial that we also address the final issue which is before us for consideration, i.e., the question of relevance of 'moral turpitude' in the present circumstances. While contemplating to invoke the concept of 'moral turpitude' as a decisive factor in granting or withholding the suspension of conviction for an individual, there is a resounding imperative to address the issue of depoliticising criminality. There has been increasing clamour to decriminalise polity and hold elected representatives accountable for their criminal antecedents. It is a hard truth

that persons with a criminal background are potential threats to the very idea of democracy, since they often resort to criminal means to succeed in elections and other ventures. In the present context too, substantial doubt has been cast upon the Appellant's criminal antecedents along with the veracity and threat posed by these claims, in light of the many FIRs that have been produced in these proceedings.

20. While this concern is undeniably pertinent, it remains the duty of the courts to interpret the law in its current form. Although 'moral turpitude' may carry relevance within the context of elected representatives, the courts are bound to construe the law in its extant state and confine their deliberations to those facets explicitly outlined, rather than delving into considerations pertaining to the moral rectitude or ethical character of actions. This is especially true when it is solely motivated by the convicted individual's status as a political representative, with the aim of disqualification pursuant to the RPA.

21. Having said so, we hasten to hold that societal interest is an equally important factor which ought to be zealously protected and preserved by the Courts. The literal construction of a provision such as Section 389(1) of the CrPC may be beneficial to a convict but not at the cost of legitimate public aspirations. It would thus be appropriate for the Courts to balance the interests of protecting the integrity of the electoral process on one hand, while also ensuring that constituents are not bereft of their right to be represented, merely consequent to a threshold opinion, which is open to further judicial scrutiny.

22. We are of the further considered opinion that, the phenomena of docket explosion or the high backlog of cases should not be construed as valid grounds for thwarting the legislative intent enshrined in Section 8(3) of the RPA, which *inter alia* provides that:

> *".....(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release...."*

23. It is therefore imperative to weigh the competing interests presented by both the Appellant and the State. This case pertains to *(a)* the Appellant's disqualification as a Member of the Lok Sabha under Section 8(3) of the RPA, which disentitles a person who has been convicted and sentenced for a period exceeding two years, from holding office or contesting elections; and *(b)* the State's pursuit of a conviction under Section 3(1) of the UP Gangsters Act, which penalises individuals labelled as a 'gangster' for participation in organised crime and engaging in anti-social activities. While the pending appeal raises significant legal and factual issues, it is exigent that the Appellant's future not be left hanging in the balance solely due to the said conviction. In such instances, where the Appellant's disqualification and the State's criminal proceedings intersect, it becomes incumbent upon the Court in which the appeal is pending, to hear the matter out of turn and expeditiously adjudicate the same.

CONCLUSION AND DIRECTIONS

24. We, thus, deem it appropriate to partially allow this appeal and suspend the conviction awarded to the Appellant in Special Sessions Trial No. 980/2012 subject to the following conditions, clarifications and directions:

i. The Ghazipur Parliamentary Constituency shall not be notified for bye-election, in terms of Section 151 of the RPA, till the decision of the Appellant's criminal appeal by the High Court;

ii. The Appellant shall, however, 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;

iii. The continuance of MP led welfare schemes in the Ghazipur Parliamentary Constituency without the Appellant being associated for the release of grants for such schemes, is not an irrevocable consequence as all such Schemes can be given effect, even in the absence of the local parliamentary representative;

iv. The Appellant shall not be disqualified to contest future election(s) during the pendency of his criminal appeal before

the High Court and if he is elected, such election will be subject to outcome of the First Criminal Appeal; and

v. The High Court shall make an endeavour to decide the Appellant's criminal appeal expeditiously and before 30.06.2024.

25. Consequently, we direct the Registrar General of the High Court to put up this order before Hon'ble The Chief Justice of the High Court for immediate enlisting of the Criminal Appeal No. 5295 / 2023 with a request to the appropriate Bench, for an out of turn hearing and adjudication of the said appeal by 30.06.2024. The Appellant is directed to extend full cooperation to the High Court in this regard, failing which, this order shall be liable to variance.

26. It is clarified that we have not expressed any opinion on the merits of the case and the First Criminal Appeal shall be decided by the High Court on its own merits.

27. The present appeal is disposed of in the above terms.

DIPANKAR DATTA, J.

1. The draft of the judgment prepared by Hon'ble Surya Kant, J., speaking for His Lordship and Hon'ble Ujjal Bhuyan, J., is so well considered and supplemented with an enviable degree of articulation that it almost prompted my concurrence. However, with all the respect and humility at my command, I have not been able to be *ad idem* with the Hon'ble Judges in the majority. I believe that the importance of the question involved would compel me to tread the path of dissent *en route* a different end.

2. The assail in this appeal is to a judgment and order dated 24th July, 2023 of the High Court of Judicature at Allahabad ("High Court", hereafter) whereby a criminal miscellaneous application[1] under section 389(1) of the Code of Criminal Procedure, 1973 ("Cr. PC", hereafter) filed by the appellant, in connection with an appeal under section 374(2)[2] thereof, was partly allowed. The sole question that emerges for a decision on this appeal is

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2 Criminal Appeal No. 5295/2023

whether the High Court was justified in spurning the prayer of the appellant for stay of the order appealed against while it proceeded to grant his prayer for suspension of execution of sentence, in exercise of power conferred by section 389(1) of the Cr. PC.

3. The appellant is a member of Parliament, having been elected to the 17th Lok Sabha from Ghazipur constituency in 2019. He suffered a conviction under section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 ("Gangsters Act", hereafter) *vide* judgment of the Special MP/MLA Court, Ghazipur ("Trial Court", hereafter) dated 29th April, 2023[3], consequent whereto he was sentenced to four years imprisonment together with a fine of Rupees One lakh. Aggrieved thereby, he approached the High Court for suspension of execution of the sentence as well as for suspension of the order appealed against which has succeeded in part as noted above. The refusal of the High Court to stay the conviction of the appellant has resulted in his disqualification from the membership of Parliament by operation of law, i.e., section 8(3) of the Representation of the People Act, 1951 ("the RoP Act", hereafter), which has duly been notified by the Lok Sabha Secretariat[4]. As a sequel thereto, the appellant stands barred from partaking in the electoral process for six years from the date of serving his sentence.

4. Hon'ble Surya Kant, J. in His Lordship's judgment has given a resume of the facts leading to the appeal carried by the appellant before this Court. Having regard thereto as well as the question that arises for decision, it is not considered expedient to repeat the same. However, in course of hearing of this appeal, the parties through their respective learned senior counsel have advanced elaborate submissions which are proposed to be noted a little later.

5. In the impugned judgment and order, the High Court determined that the threshold for suspension of the order under appeal was not reached in the present case. It observed that suspension of the order appealed against is not the rule but an exception to be availed only in rare cases

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3 Special Sessions Trial No. 980/2012

4 *vide* notification bearing S.O. No. 1994 published in the Gazette of India dated 1st May, 2023

and that exceptional circumstances have to be brought to the notice of the Court before the relief of such a suspension could be granted. Unless the attention of the Court is directed towards specific consequences that would befall the appealing convict on account of the conviction, he cannot urge for suspension of the order. It was noticed by the High Court that the only ground urged by the appellant for seeking relief of suspension of the order under appeal was that if such relief were not granted, he would remain disqualified. According to the High Court, absolutely nothing was mentioned in the affidavit filed by the appellant about the ramifications of the conviction. Another consideration which weighed with the High Court was the objective of the Gangsters Act, being a law enacted to maintain public order for reining in organised crime and anti-social activities in the state of Uttar Pradesh as well as the severity of the accusations against the appellant. Consequently, it was ruled that although the appellant had made out a case of suspension of execution of sentence but could not fulfil the conditions for staying his conviction.

6. Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the appellant, assailed the impugned order by advancing the following submissions:

a. The failure to stay the conviction would inflict irreparable harm to the appellant. There is only a primary conviction, against which an appeal has been carried to the High Court. Having regard to the huge pendency of appeals in the High Court, the said appeal is not likely to be heard in the near future resulting in the appellant being deprived of engaging in electoral politics for around 10 years. The case is at the stage of first appeal, and refusal to stay the conviction of the appellant at this stage would be an onerous disproportionate limitation.

b. The appellant has been a member of the Uttar Pradesh Legislative Assembly five times and a member of the Lok Sabha twice. He has not been convicted for any offence in the past, much less any heinous offence, apart from the conviction under consideration. In a particular case, viz. Case Crime No. 589/2005, the appellant has been acquitted after a full-fledged trial. The offence, in the case under consideration, though has been held to be proved, the

judgment of conviction suffers from various infirmities based whereon the High Court itself proceeded to suspend execution of the sentence. There could be no cogent ground for not staying the conviction for the self-same reasons. The infirmities present in the judgment and order rendered by the Trial Court and the infirmity from which the judgment and order under appeal suffer would constitute 'exceptional circumstances' empowering this Court to stay the conviction.

c. The electoral constituency of Ghazipur is not being represented in Parliament due to the appellant's disqualification arising out of his conviction. The people of Ghazipur are suffering as they do not have a legislative representative who can highlight their grievances in Parliament, and only executive and judicial remedies are left available to them.

d. Further, the execution of more than two dozen projects under the Members of Parliament Local Area Development Scheme[5], which have been initiated by the appellant, are now upended and uncertain. The damage likely to be caused by reason thereof is such that it cannot be undone at a later stage.

e. Balance of convenience in the present case falls squarely in favour of the appellant. The appellant would suffer irreversible harm if the conviction is not stayed as he would remain disqualified and would not be able to participate even in the General Elections scheduled for 2024. If the appellant was to be ultimately found not guilty by the High Court, then no Court would be able to turn the clock back and remedy the harm suffered by the appellant. However, if the conviction were to be stayed and down the line if the High Court affirmed the conviction by the Trial Court, the appellant would in any case be bound to serve his sentence without any prejudice caused to the respondent.

f. Irreversibility of the position is one important factor that the High Court failed to bear in mind, while refusing to stay the conviction.

5 MPLAD Scheme

7. Resting on the aforesaid submissions, Dr. Singhvi prayed that while setting aside the judgment and order of the High Court, to the extent impugned in this appeal, the conviction recorded against the appellant be stayed.

8. *Per contra,* Mr. K.M. Nataraj, learned Additional Solicitor General appearing for the respondent, supported the impugned judgment and order and advanced the following contentions:

a. The standards for suspension of sentence and stay of conviction are different. Stay of conviction can only be ordered by the court when exceptional circumstances are shown to exist. Dissimilar to suspension of execution of sentence, it is not a matter of practice to stay the conviction at the stage of first appeal. No exceptional circumstance having been shown to exist, the High Court has passed a reasoned judgment that ought not to be interfered on sparse grounds.

b. The conviction in the present case is under the Gangsters Act which is of a serious nature and stay of conviction in this case would not be in consonance with the settled principles laid down by this Court in several of its decisions.

c. The appellant is a notorious criminal, with numerous criminal antecedents. Reference was made to a list in this regard forming part of the reply of the respondent.

d. The acquittal in Case Crime No. 589/2005 could be attributed to witness intimidation by the appellant as most witnesses in that trial turned hostile and did not support the prosecution case. The appellant was not acquitted unequivocally on merits. In any event, an appeal against the acquittal is pending.

9. Learned ASG also invited our attention to the contents of the affidavit filed by the appellant before the High Court in support of his prayer for suspension of the order under appeal as well as the finding returned by the High Court in that behalf. He contended that apart from referring to the fact of disqualification incurred by him by reason of the conviction, the appellant had made no disclosure of facts and figures to demonstrate the consequences that he is likely to suffer should his prayer for suspension of

the order under appeal be not granted. Referring to the arguments advanced by Dr. Singhvi on behalf of the appellant, learned ASG contended that the same do not deserve consideration being beyond the four corners of the affidavit of the appellant before the High Court. It was also his contention that the High Court rightly observed that *"there is absolutely nothing that what consequences are likely to fall upon conviction"*.

10. Reiterating that no exceptional circumstances deserving suspension of the order appealed against having been brought out by the appellant, learned ASG concluded by submitting that the appeal may be dismissed.

11. Reference has been made by learned senior counsel appearing for the parties to multiple decisions of this Court on the subject of stay/suspension of conviction, which need to be adverted to prior to deciding the contentious issue. In the process, it would be essential to consider certain other decisions too having a bearing on the question that this Court is now tasked to decide.

12. The decision in ***Ravikant S. Patil v. Sarvabhouma S. Bagali***[6]**,** heavily relied on by Dr. Singhvi, in its turn, relied on ***Rama Narang v. Ramesh Narang & Ors.***[7]. ***Ravikant S. Patil*** (supra) illuminates the position of law with respect to stay/suspension of conviction. This Court was considering an appeal under section 116-A of the RoP Act preferred by the appellant who was an elected member of the Karnataka Legislative Assembly. By judgment and order dated 28th July, 2000, the appellant was convicted and sentenced to undergo imprisonment for a period of 7 (seven) years by the Addl. Sessions Judge, Solapur, Maharashtra. Immediately thereafter, a criminal appeal was preferred by the appellant challenging the judgment of conviction and order of sentence. Pending the appeal, the Bombay High Court granted stay of the execution of the sentence. Fresh elections to the Karnataka Legislative Assembly having been notified in the early part of 2004, the appellant once again moved the Bombay High Court and obtained an order dated 26th March, 2004 staying his conviction. The appellant having filed his nomination by the last date, i.e., 31st March, 2004, objection was lodged by the respondent which was turned down.

6 (2007) 1 SCC 673
7 (1995) 2 SCC 513

In the election that followed, the appellant came to be elected. Upon an election petition being filed by the respondent, the same succeeded before the Karnataka High Court on the ground that the appellant stood disqualified in terms of provisions contained in section 8 of the RoP Act to contest an election. The principle which is laid down by this decision is that stay of conviction is the exception, and to avail that exception the appellant will have to show irreversible consequence and injustice. The operative part is reproduced hereinbelow:

> "15. 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. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction.
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> 16.5. All these decisions, while recognising 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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> (emphasis supplied)

Since the appellant was not disqualified to file his nomination as well as to contest the election, this Court set aside the impugned judgment and order while allowing the appeal.

13. Turning to ***Rama Narang*** (supra), a decision rendered by a 3-Judge

Bench of this Court, it is observed that this decision was not formally cited by either of the parties though interpretation of section 389, Cr. PC and the law laid down therein for guiding the courts to suspend execution of the sentence and the order appealed against have significant relevance for the purpose of deciding this appeal. There, the appellant (Managing Director of the company in question) was convicted of certain offences punishable under the Indian Penal Code, 1860 ("IPC", hereafter) and sentenced to three months' and two and a half years' rigorous imprisonment together with fine of Rs.5,000/-. The conviction and sentence were challenged by the appellant under section 374(2) of the Cr. PC before the Delhi High Court. While hearing an application under section 389(1) thereof, stay of operation of the impugned order was directed and he was granted bail. Despite such conviction resulting in the appellant's disqualification under section 267 of the Companies Act, 1956 to remain as the Managing Director, he continued to attend Board meetings of the company in question. Resolutions adopted in meetings attended by the appellant were challenged in a Company Petition filed before the Bombay High Court by the respondent, which was subsequently withdrawn. There were other proceedings between the parties before the Company Law Board, to which reference in detail need not be made. Ultimately a suit came to be instituted before the Bombay High Court by the appellant and others and a learned single Judge granted interim relief which enabled the appellant to continue as the Managing Director. An appeal was carried therefrom to the Division Bench, which was partly allowed. That part of the impugned order enabling the appellant to continue as the Managing Director was set aside. This order was then challenged before this Court. *Inter alia*, what fell for examination in that case was whether the power under section 389(1) of the Cr. PC could be invoked to stay the conviction. A three-Judge Bench of this Court held that there is no reason why a narrow meaning to section 389(1) should be given. Even otherwise, it was held that the High Courts have the power under section 482 of the Cr. PC to order such a stay. This Court further held that although an order of conviction by itself is not capable of execution under the Cr. PC, but in certain situations and in a limited sense, an order of conviction could be executed, that is to say, when it may result in incurring of some disqualification under other enactments. In such cases, the Court also held that it was permissible to invoke the power under section 389(1) of the Cr. PC for

staying the conviction. On facts, the Court held that the appellant had not moved the Delhi High Court with clean hands and had attempted to play hide and seek for which the said court could not even apply its mind as to whether the circumstances before it did deserve a stay of the conviction. The reasoning for such conclusions is traceable to paragraphs 16 and 19 of the decision, reading as follows:

> "16. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate. ***
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> 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 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 of (sic 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."

(emphasis supplied)

14. ***Navjot Singh Sidhu v. State of Punjab***[8], cited on behalf of the appellant, had the occasion to deal with an argument that in order to maintain purity and probity in public bodies, criminalisation of politics has to be stopped and persons who have been convicted of any offence should not be allowed to enter Parliament; and that irrespective of quantum of sentence, if a person is convicted for an offence referred to in sub-section (1) of section 8 where the punishment imposed may only be a fine, a person will incur the disqualification from the date of conviction which will remain for a period of 6 (six) years, thus evincing the intention of the framers of law that a convict should not enter the precincts of Parliament or the Legislature of a State. The contention raised was rejected holding that the RoP Act is a complete code providing not only the eligibility and qualification for membership of the

8 (2007) 2 SCC 574

House of People and the Legislative Assemblies but also for disqualification on conviction and other matters. Parliament in its wisdom having made a specific provision for disqualification on conviction by enacting section 8, it was held that it is not for the Court to abridge or expand the same. ***Rama Narang*** (supra) and ***Ravikant S. Patil*** (supra) were referred to, which recognized the power possessed by the court of appeal to suspend or stay an order of conviction. Such decisions having also laid down the parameters for exercise of such power, it was also held that it is not possible to hold, as a matter of rule, or, to lay down, that in order to prevent any person who has committed an offence from entering Parliament or the Legislative Assembly the order of the conviction should not be suspended. It was reminded that the courts have to interpret the law as it stands and not on considerations which may be perceived to be morally more correct or ethical.

15. On behalf of the respondent, learned ASG cited ***Sanjay Dutt v. State of Maharashtra***[9] to contend that a mere bar to contest elections would not be sufficient ground to stay the conviction. The relevant portion of the decision is excerpted below:

> "12. 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 CrPC shall be exercised only under exceptional circumstances.
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> 14. 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…."
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> (emphasis supplied)

9 (2009) 5 SCC 787

16. The *vires* of section 8(4) of the RoP Act came to be challenged in ***Lily Thomas v. Union of India***[10], a decision on which learned ASG placed heavy reliance. According to him, what flows from the said decision is that exercise of power to stay a conviction should be limited to very exceptional cases and the present case does not commend to be such an exceptional case so as to warrant any stay of conviction recorded against the appellant.

17. Sub-section (4), which was inserted in section 8 of the RoP Act by an amendment with effect from 15th March, 1989, provided for an automatic stay of disqualification from membership if a convicted member of Parliament/Legislative Assembly brought an appeal/application for revision seeking setting aside of his conviction within three months thereof. This Court in ***Lily Thomas*** (supra) held that Parliament lacked the power to enact sub-section (4) of section 8 and declared the same *ultra vires*. It also found no merit in the submissions advanced on behalf of the respondents that if a sitting member of Parliament or a Legislative Assembly suffers from a frivolous conviction by the trial court of the nature referred to in sub-sections (1), (2) and (3) of section 8, he will be remediless and suffer immense hardship as he would stand disqualified on account of such conviction in the absence of sub-section (4). While repelling such submission, ***Rama Narang*** (supra) and ***Ravikant S. Patil*** (supra) were referred to and it was held that in an appropriate case not only could the appellate court in exercise of its power under section 389(1) of the Cr. PC stay the order of conviction, but the High Courts in exercise of its inherent jurisdiction under section 482 of the Cr. PC could also stay the conviction if the power was not to be found in section 389 thereof.

18. ***Lok Prahari through General Secretary S.N. Shukla v. Election Commission of India & Ors.***[11] was cited by Dr. Singhvi. There, a society registered under the Societies Registration Act, 1860 invoked the Public Interest Litigation jurisdiction of this Court under Article 32 of the Constitution seeking, *inter alia*, a declaratory relief that since the law does not provide for stay of conviction, even in case of stay of conviction by the appellate court for an offence attracting disqualification under section

10 (2013) 7 SCC 653
11 (2018) 18 SCC 114

8 of the RoP Act, any such stay order does not have the effect of wiping out the disqualification and reviving the membership with retrospective effect and consequently, the seat of the member concerned is deemed to have become vacant with effect from the date of conviction in terms of Articles 101(3)(a) and 190(3)(a) of the Constitution. This Court, having considered ***Rama Narang*** (supra), ***Lily Thomas*** (supra), ***Navjot Singh Sidhu*** (supra) and ***Ravikant S. Patil*** (supra), expounded the position of law as follows:

> "16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 CrPC, the disqualification under Section 8 will not operate. The decisions in *Ravikant S. Patil* and *Lily Thomas* conclude the issue. Since the decision in *Rama Narang,* it has been well settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 will not operate. Under Article 102(1)(*e*) and Article 191(1)(*e*), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in *Rama Narang* and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in *Lily Thomas* has clarified, a stay of the conviction would relieve the individual from suffering

the consequence inter alia of a disqualification relatable to the provisions of sub-sections (1), (2) and (3) of Section 8."

(emphasis supplied)

19. The unreported decision in ***Naranbhai Bhikhabhai Kachchadia v. State of Gujarat***[12], relied on by Dr. Singhvi, was rendered on an appeal where the prayer for stay of conviction was declined by the relevant high court. The appellant, a sitting member of Parliament, had been convicted of offences under sections 332, 186 and 143, IPC along with others but acquitted of the more serious offence under section 3(1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Looking to the facts of the case, this Court was of the view that adverse consequences will certainly follow not only to the appellant but also to his constituents in case the conviction remains, and the impact thereof would be irreparable. Considering various factors as delineated in unnumbered paragraph 13, including the somewhat exceptional consequence of the disqualification of the appellant from representing his constituents in Parliament for six years, this Court quashed the prosecution against the appellant only on the condition that the appellant pays to the victim/complainant Rs.5,00,000/- within a week.

20. Finally, the recent decision of this Court in ***Rahul Gandhi v. Purnesh Ishwarbhai Modi & Anr.***[13] was placed on behalf of the appellant wherein this Court observed that section 8(3) of the RoP Act has far-reaching consequences, as it not only affects the right of the appellant to continue in public life but also is a detriment to the right of the electorate which has elected him to represent their constituency.

21. It has been noticed that in ***Ravikant S. Patil*** (supra) and ***Lok Prahari*** (supra), this Court had considered the decision in ***K.C. Sareen v. CBI***[14]. That was a case where a bank officer having been convicted for an offence punishable under the Prevention of Corruption Act, 1988 and sentenced to a year's imprisonment with fine of Rs.500/-, had carried the conviction and sentence in appeal whereupon execution of the sentence was

12 Criminal Appeal No. 418/2016 (order dated 29th April, 2016)
13 2023 SCC OnLine SC 929
14 (2001) 6 SCC 584

stayed. However, in view of the conviction which remained operative, the disciplinary authority imposed the punishment of dismissal from service. The dismissed officer once again moved the relevant high court but without success. The second order dismissing the prayer for stay of conviction was challenged before this Court. Dismissing the civil appeal, this Court ruled that:

> "11. The legal position, therefore, is this: 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 exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.
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> 13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."
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> (emphasis supplied)

22. In order to understand the manner in which the power under section 389(1) of the Cr. PC could be exercised, reference to the decision of this Court in ***State of Maharashtra v. Balakrishna Dattatraya Kumbhar***[15] would not be out of place. Faced with a circumstance surrounding the suspension of conviction of a senior excise officer by the Bombay High Court, this Court held that the conviction of public servants in corruption cases cannot be suspended merely because they would otherwise lose their jobs. This is what was also observed in paragraph 15 of the decision:

> "15. 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 examine 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."
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> (emphasis supplied)

23. Again, in ***Shyam Narain Pandey v. State of U.P.***[16], arising out of an appeal at the instance of a principal of an institution who was, *inter alia,* convicted for murder, this Court stressed on the exceptionality of the power to suspend the conviction and observed thus:

> "11. 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

15 (2012) 12 SCC 384
16 (2014) 8 SCC 909

> 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 has rightly held that it is not a very rare and exceptional case for staying the conviction."

24. Bare perusal of the aforementioned decisions reveal how this Court has differently dealt with approaches made by, *inter alia*, a Managing Director of a company, a member of the Legislative Assembly, a member of Parliament, a film actor intending to join politics, a bank officer, a civil post holder and a principal of an institution, while they sought for stay of conviction.

25. It is also noteworthy that notwithstanding ***Rama Narang*** (supra) referring to section 482 of the Cr. PC as the repository of power to stay a conviction in a case where section 389(1) thereof may not apply, the power of an "Appellate Court" to stay a conviction pending an appeal against a judgment and order of conviction and sentence too has been read into section 389(1) by ***Rama Narang*** (supra), although the statute on its plain language does not expressly say so. This, in all probability, is because the inherent power under section 482 is the exclusive preserve of the high courts and not any other court exercising appellate power; hence, an "Appellate Court", not being a high court, would be denuded of the power to stay a conviction under section 482 in case such a prayer were made during the pendency of an appeal before it (the appellate court).

26. It is considered most appropriate, at this stage, to refer to the decision of the Constitution Bench of this Court in ***K. Prabhakaran v. P. Jayarajan***[17]. In a somewhat different context, this Court did have the occasion to consider section 389, Cr. PC and made a pertinent observation as to what is permissible thereunder. The said observation reads:

> "42. *** A court of appeal is empowered under Section 389 to order that pending an appeal by a convicted person 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 bond. What is suspended is

17 (2005) 1 SCC 754

not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. ***"

(emphasis supplied)

27. Although the aforesaid observation in ***K. Prabhakaran*** (supra) correctly captures the essence of section 389, Cr. PC., it appears not to have been placed before the other Benches of this Court while it rendered decisions subsequent thereto (some of which have been noted hereinabove). Although a difference between an 'order of conviction being stayed' and 'execution of the order appealed against being suspended' in the context of exercise of jurisdiction by the courts under the Cr. PC is discerned, such difference was not delineated possibly because the issue before the Court did not warrant it. In any event, ***K. Prabhakaran*** (supra) being a Constitution Bench decision, the same would bind all Benches of lesser strength and it is trite that any interpretation of section 389(1), Cr. PC not in line therewith has to yield to it. At the same time, ***Rama Narang*** (supra) without being doubted having held the field so long and by which the power to stay conviction under section 389, Cr. PC stands judicially acknowledged, all later decisions including ***K. Prabhakaran*** (supra) must be read as complimentary to it.

28. At this juncture, it would also be of profit to refer to the decision in ***Lalsai Khunte v. Nirmal Sinha***[18] where, while discussing the effect of stay of conviction as compared to suspension of the order under appeal at some length, the Bench followed ***K. Prabhakaran*** (supra). In that case, the appellant had been convicted for offences under sections 420 and 468 read with section 34 of the IPC and sentenced to two years imprisonment by the trial court's order dated 9th May, 2002. The appellate court by an order dated 31st May, 2002 suspended the order of the trial court dated 9th May, 2002 and granted bail to the appellant. Meanwhile, the appellant and the respondent intended to contest election for the same constituency seat. The Returning Officer was misled by the appellant, who withheld vital information with regard to his conviction. In the result, the appellant's candidature could not be rejected by the Returning Officer. Both the appellant and the respondent thereafter contested the election, wherein the former returned victorious. An election petition was filed by the respondent and it succeeded before the

18 (2007) 9 SCC 330

relevant high court resulting in the appellant's election to the Legislative Assembly being set aside. The order of the high court was the subject matter of the appeal. The sole question falling for decision was whether the order passed on 31st May, 2002 by the appellate court, whereby the conviction and sentence of the appellant was suspended, would amount to staying the conviction or not. This Court, while dismissing the appeal, perused the appellant's application under section 389, Cr. PC and found the same to be a routine application for suspension of sentence without any prayer seeking stay of conviction. ***Rama Narang*** (supra) was read to lay down the law that section 389(1), Cr. PC empowers the appellate court to stay the conviction also but that, suspension of the order appealed against would not amount to staying the conviction. Referring to ***Ravikant S. Patil*** (supra), it was observed that there an application for stay of conviction was specifically filed specifying the consequences if the conviction was not stayed and that such fact was taken into consideration while holding in that case that the conviction was specifically stayed, which was not the case here. Suspension, the Court held, did not mean the stay of the conviction. It was held that if the incumbent had been vigilant enough, he could have moved the court even later on for obtaining the stay of conviction, particularly in view of the fact that he wanted to contest the election but that was not done. It was also held that:

> "14. As already pointed out above that on 31-5-2002, the appellate court while granting him the bail only suspended the impugned order dated 9-5-2002. Thus suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remain suspended that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought."
>
> (emphasis supplied)

29. In the context of civil proceedings, it is noted that Order XLI Rule 5 of the Code of Civil Procedure ("CPC", hereafter) empowers an appellate court to order stay of execution of the decree appealed from. The provisions of Order XLI of the CPC apply to appeals from orders in terms of Rule 2 of Order XLIII thereof. Law is well settled that 'stay of operation of an order' means that the order which has been stayed would not

be operative from the date the order of stay is passed but it does not mean that the order, which is stayed, is wiped out from existence. However, it is in section 389(1), Cr. PC that the expression *"execution of the sentence or the order appealed against be suspended"* pending the appeal is found instead of the legislature having used a simpler expression like "the order appealed against be stayed". Had the statute provided so and an order to that effect were passed, it would be sufficient to stay the conviction as well as the sentence. However, the legislature has prefaced *"the sentence or the order appealed against"* with *"execution"*, which has the effect of connoting that only such part of the judgment and order appealed against, which is capable of being executed, can be suspended under section 389(1), Cr. PC. Though conviction would be an integral part of the judgment and order carried in an appeal, but it is not executable in the sense a sentence of imprisonment and/or fine or any other order fastening obligation on the convict is executable. While section 389(1) empowers an appellate court to suspend execution of the sentence or the order appealed against, an order suspending execution of the order appealed against [according to ***K. Prabhakaran*** (supra) and ***Lalsai Khunte*** (supra)] would not amount to a stay of conviction. An order staying the conviction has to be sought before the concerned court and obtained by the convict to render any disability including a disqualification as in the present case, incurred as a result of the conviction, inoperative. In the absence of a stay of conviction having been sought and an order to that effect having been passed, an order merely suspending execution of the order appealed against would be of no use in a matter of the present nature.

30. Be that as it may, the guiding principles that emerge from these precedents can briefly be summarised as follows:

a. the power to suspend execution of an order and/or to stay a conviction is traceable to section 389(1), Cr. PC notwithstanding that the high courts may, in appropriate cases, exercise their inherent jurisdiction preserved by section 482 of the Cr. PC to grant a stay of conviction;

b. suspension of execution of an order of conviction or stay of the conviction — whatever be the prayer made before the Court of appropriate jurisdiction, the same can be granted depending upon the facts of each particular case and the courts have a duty to look

at all aspects including the ramifications of keeping the conviction in abeyance.

c. stay of conviction or suspension of execution of conviction is a rare occurrence, and in order to avail this exceptional measure, it must be demonstrated that irreversible consequences and injustice would otherwise entail which cannot be undone in future;

d. a convict who has appealed against the judgment and order of conviction and sentence - if he wishes to have the conviction stayed - has to specifically pray for stay of conviction, since despite suspension of execution of sentence and the order appealed against, the conviction remains and such suspension does not amount to stay of conviction;

e. while seeking a stay of conviction pending appeal, it is imperative for the appealing convict to expressly bring to the court's attention the foreseeable consequences that could ensue if the conviction were not stayed and failure to elucidate these specific consequences may lead to the denial of a stay of conviction;

f. once a conviction is either stayed or execution of the conviction is suspended under the Cr. PC, the conviction becomes inoperative starting from the date of stay/suspension without, however, having the effect of obliteration; and

g. one cannot establish a fixed rule that the order of conviction should not be stayed or its execution suspended as a means to prevent an individual, who has committed an offence, from entering Parliament or the Legislative Assembly.

31. The aforesaid principles, though indicative but not exhaustive, do provide a standard to guide the courts to reach an appropriate conclusion. Notwithstanding the necessity to judge each case based on its own peculiar facts, every court seized of a prayer for stay of a conviction or suspension of execution of a conviction made by a parliamentarian or a legislator, governed by the RoP Act, may do well to bear in mind certain other important aspects which I wish to dwell upon briefly in course of the present deliberation.

32. The Constitution of India being the supreme law of the nation, it serves as the ultimate source from which all legislative enactments, whether central or state, derive their legitimacy. Amidst this vast legislative landscape, if any one enactment is to be bestowed with the pride of place just below the Constitution, it is undoubtedly the RoP Act because of the same being anchored in the concept of the social contract and the rule of law. The Constitution is a social contract between the government and its citizens, where the State derives its authority from the consent of the governed. In this context, the RoP Act stands as a pivotal instrument that translates the theoretical underpinnings of the social contract into practical reality. It establishes the legal framework for conducting elections, ensuring that every citizen has a fair and equal opportunity to exercise his right to vote and participate in the political process. By regulating the qualifications and disqualifications of candidates, delimiting constituencies, and overseeing the electoral machinery, the RoP Act – a complete code in itself – reinforces the rule of law and upholds the principles of justice, fairness and transparency. It symbolizes the nexus between the constitutional ideals of inclusive and participatory democracy and the constitutional concept of *"We the People"* by facilitating the active participation of citizens in the democratic process. The RoP Act, thus, has a pervasive impact on the lives of all citizens, transcends all political boundaries and intricately weaves itself into the very fabric of the nation's democratic body polity.

33. This is more accentuated when considered in the light of the command of the Constitution, which delineates the criteria for disqualification of the members of the Parliament and the Legislative Assemblies or the Legislative Councils of States having such a council.

34. Articles 102 and 191 of the Constitution speak of the circumstances under which a person will be treated as disqualified from the membership of either House of Parliament and the Legislative Assemblies/Legislative Councils of the State, respectively. Certain incidents which could disqualify a parliamentarian are specified in clauses (a) to (d) of Article 102. Sub-clause (e) of clause (1) of Article 102, having relevance here, provides that *"a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament".* Sub-clause (e) of clause (1) of Article 191

is similarly worded. The affirmative words used in Articles 102(1)(e) and 191(1)(e), thus, confer absolute and unconditional power on the Parliament to provide for disqualification of an elected member through legislation.

35. As a reasonable sequitur, the Parliament by exercising this power has listed out the disqualifications for membership of Parliament and Legislative Assemblies/Legislative Councils of State as are found in section 8 of the RoP Act. Sub-section (3) of section 8 provides that *"(A) person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release"*. Any interpretation of section 8 of the RoP Act, therefore, has to be in consonance with this Constitutional scheme.

36. In this regard, a brief reference to ***K. Anandan Nambiar, In Re***[19], a decision of ancient vintage rendered by a Division Bench of the Madras High Court, may not be inapt. The Court was dealing with a petition under Article 226 of the Constitution presented by a member of the Legislative Assembly. Upon his arrest and continuous detention under the Madras Maintenance of Public Order Act, 1949, the petitioner applied for a mandamus or any other appropriate writ to declare and enforce his right to attend the sittings of the Legislative Assembly then in progress, either freely or with such restrictions as may be reasonably imposed. It was held that a member of the Legislative Assembly who is detained in prison cannot claim any superior right to participate in the session of the Assembly. A passage from the decision, which was delivered at the dawn of the Constitution, gives an insight to the pillars underground on which the Constitution is founded and whether placing the petitioner under detention, necessarily resulting in his absence from assembly sessions, could put in jeopardy any basis of the Constitution. The relevant passage is quoted below:

> "7. We have tried to follow Mr. Kumaramangalam in his underground exploration of the foundations of the Constitution. But we cannot see how they could be placed in jeopardy by MLAs under the lawful preventive detention being (not?) permitted while under such

19 AIR 1952 Madras 117

detention to attend the sittings of the House. We are able to discern two main massive and indispensable pillars underground on which the Constitution is founded. The first pillar is unswerving loyalty by each and every citizen to the Constitution and to the flag of the Indian Union, the Constitution to be changed only by constitutional means eschewing any form of violence. The second pillar we may describe as honesty, character and integrity in the component organs of the Constitution, viz., the Legislature, and the Executive and judiciary. We are called upon to consider the legal position with regard to all forms of preventive detention, whether for action prejudicial to the security of the State itself or the maintenance of public order which threatens to undermine the first pillar or for action prejudicial to the maintenance of essential services particularly those affecting the supply of food, such as black marketing and boarding and cornering operations by which fortunes can be accumulated at the expense of the suffering poor, which threatens to undermine the second pillar. If a case should ever arise of a Member of a Legislative Assembly being preventively detained for black marketing operations prejudicial to such essential services, involving as it does social and moral turpitude, really worse than that of many criminals imprisoned under ordinary law, can it possibly be said that his being restricted from attending the House while under such detention in the slightest degree puts in jeopardy any basis of the Constitution? On the contrary, both justice and law require that he should be restrained from further legislative activity and further misuse of his position till the electorate call upon him to account at the next election. We are unable to differentiate in law any treatment of cases of preventive detention. Once a member of a Legislative Assembly is arrested and lawfully detained, though without actual trial under any Preventive Detention Act, there can be no doubt that under the law as it stands, he cannot be permitted to attend the sittings of the House. A declaration by us that he is entitled to do so, even under armed escort is entirely out of the question. We however readily concede the contention of Mr. Kumaramangalam that if a party in power detains a political opponent or continues his detention with

> the mala fide object of stifling opposition and prejudicing the party to which he belongs in a forthcoming election, there would be an undermining of the basis of the Constitution, putting in jeopardy the second pillar to which we adverted. That contention is wholly irrelevant for the purposes of this petition, which proceeds on the basis that detention is lawful, bona fide and for proper grounds.
>
> 8. *** We see no grounds for any differentiation in treatment as between a member of a Legislative Assembly detenu and any other ordinary detenu in the application of these rules…."
>
> (emphasis supplied)

37. A brief survey of the Constituent Assembly Debates would also aptly lead to the original intention of our lawmakers that culminated in the enactment of the RoP Act. A perusal of the Debates reveals the deliberate exclusion of the contingencies under Article 102 (Article 83 of the Draft Constitution), which was left for the new Parliament to decide. An amendment was moved by Prof. K.T. Shah seeking explicit disqualification of those members who are convicted of any offence of (a) treason against the sovereignty, security, or integrity of the State, (b) bribery and corruption, and (c) any offence involving moral turpitude, and liable to a maximum punishment of two years' rigorous imprisonment. Reverting to the amendment, Mr. H.V. Kamath responded thus[20]:

> "I am sure that this new Parliament under the new Constitution will frame such rules as will debar such Members from sitting or continuing in either House of Parliament as have been convicted of any of the offences which are mentioned by Prof. Shah. The case mentioned in the amendment is so obvious that nobody who is imbued with the right public spirit will say that a member convicted of treason, bribery or corruption or any other offence involving moral turpitude should be allowed to continue as a Member of either House of Parliament. It is derogatory not merely to the dignity of the Houses of Parliament but also derogatory to the good sense and wisdom of the people who elected them as members of Parliament."

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20 Constituent Assembly Debates, Volume 8 (19th May, 1949)

38. Such was the vision of the Constituent Assembly. It reflects the highest commitment to the principles of democracy and the rule of law. The RoP Act, born out of this Constitutional vision, undoubtedly stands as a powerful symbol of breaking free from the chains of colonialism and captures the essence of India's journey from colonial subjugation to a vibrant, sovereign democracy. It marked a transformative shift, highlighting that the nation's freedom was not just about waving the flag but about empowering its people to participate actively in shaping their own future and setting up a robust mechanism of accountability for those who are entrusted with the responsibility of governance.

39. The decision by the lawmakers in the early years of independent India choosing to abide and be governed by a robust regulatory framework like the RoP Act, complete with stringent provisions such as section 8, was indeed a bold and forward-thinking choice which underlines India's commitment to establishing a strong and accountable democratic system rooted in the rule of law and integrity right from the beginning.

40. In ***K. Prabhakaran*** (supra), this Court underlined the aim of introducing disqualification under section 8(3) of the RoP Act, which is to deter criminalisation of politics. It was observed:

> "54. *** Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics, and the House — a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a hold barred and have no reservation from indulging in criminality to win success at an election."
>
> (emphasis supplied)

41. In ***Public Interest Foundation and others v. Union of India and Another***[21], another 5-Judge Constitution Bench of this Court expressed anguish on the criminalisation of politics and observed thus:

21 (2019) 3 SCC 224

> "118. *** A time has come that Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by Parliament through appropriate legislation. The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonised when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even conceive of the idea of entering into politics. They should be kept at bay."
>
> (emphasis supplied)

42. In such a context, the unequivocal provision within the RoP Act that mandates automatic disqualification upon the recording of a conviction vividly reflects the deliberate legislative intent of the Parliament to keep away any tainted parliamentarian from continuing in office until, of course, he secures a stay of the conviction under the governing procedural law. In the light of the foregoing discussion, it may not be proper for the Courts to deviate from this straightforward course set up by the Parliament and grant a stay of the conviction as a matter of routine, thereby paving the way for the parliamentarian/legislator to represent his constituency till such time his appeal is decided.

43. One cannot be oblivious that the parliamentarians themselves are instrumental in enacting the central laws, including the RoP Act. Once they have laid down a standard under the RoP Act by which an individual parliamentarian's actions are to be judged, those standards ought not to be relaxed simply on the consideration that the electorate would stand deprived of its representation in the Parliament. In fact, it is expected of a parliamentarian to meet a higher standard due to the position of trust and responsibility held by him. The integrity of this process hinges on the consistent application of the law, ensuring that no one, not even the

architects of the statute themselves, can alter the measuring stick once it has been chosen. This steadfast adherence to standards upholds the principles of justice, accountability, and the rule of law, which are the cornerstones of a just and democratic society.

44. Looked at through an altogether different lens, what is found from different central enactments is this. The Chairperson/members of the National Green Tribunal constituted under the National Green Tribunal Act, 2010 ("the NGT Act", hereafter), the Chairperson/members of the National and State Human Rights Commissions constituted under the Protection of Human Rights Act, 1993 ("the Human Rights Act", hereafter), and advocates enrolled in terms of the Advocates Act, 1961, stand the risk of being removed from public offices held by them or removed from the rolls of advocates upon conviction being recorded on a criminal charge involving moral turpitude. The precedents of this Court, to which reference has been made in course of the foregoing discussion, do lay down the principle that the likelihood of losing his livelihood (a facet of the Fundamental Right to Life) by the appealing convict if the conviction were not stayed during the pendency of the appeal is not a good enough ground for obtaining such relief. It could be so that upon the conviction being set aside, *status quo ante* may be restored, however, this might not be acceptable to those principled few who put their reputation at a pedestal higher than pecuniary gains and rue the days of survival with the social stigma attached to such a removal. Restoring the *status quo ante* in all cases, therefore, may not be the best available solution.

45. How can one forget the second proviso to clause (2) of Article 311 of the Constitution ordaining dismissal/removal/reduction in rank of a person who is a member of a civil service or is a civil post holder if his conduct has led to his conviction on a criminal charge? He would be facing the same consequence as noted above.

46. There also exist recruitment rules framed by public authorities prohibiting consideration of the candidature of any selectee, howsoever high he might have ranked in the merit list, for an appointment if he is an accused in a criminal case and has been arrested in connection with investigation thereof. The fundamental principle of criminal jurisprudence that an accused is presumed to be innocent unless proven guilty would seem

to be forsaken in such a case. One of the reasons for imposition of such a restriction is because of the nature of the responsibility the appointee may have to shoulder. The rationale often hinges on the nature of the position sought, with a recognition that certain roles demand an intensive and raised level of scrutiny. A selectee does not have an indefeasible right of appointment but he does have, to a limited extent, a right of consideration which itself is a Fundamental Right under Article 16. No employer, in the ordinary course of business would keep the doors of employment ajar for such a selectee to enable him to join, subject to his securing an honourable acquittal in the criminal trial.

47. In our country, laws are in place enacted by the legislature or framed by the executive in terms of delegated power to prevent any individual from entering public service if he has criminal antecedents and/or has been in custody in connection with an investigation any time prior to applying for a post. While the laws would seem to require that anyone desirous of entering public service should have a blemish less and untainted profile, ironically, it is not a rare occurrence that a very few lawmakers create difficult situations for themselves and seek to be treated in a manner different from how a common job aspirant seeking to enter public service is treated. It is lamentable that what is preached by the lawmakers as a body is, at times, seen not to be put in practice by those erring lawmakers and the general feeling is that while stringent laws are enacted for the common man to abide by, it is the influential and the mighty that escape the rigours of law by misusing their status and position.

48. Considering the approach that the law requires to adopt in respect of public services/employment, should the approach be different in a scenario of automatic disqualification as per section 8 of the RoP Act? In a case of proved guilt resulting in conviction recorded by a competent court, the presumption of innocence till proved guilty has no place and loses its sway. The fact that the court is approached by a parliamentarian/legislator, by itself, should not be viewed with such importance and indispensability that his status should tilt the scales in his favour. Would it be fair that a convict, no matter how mighty he is and whatever position he holds, gets a preferential treatment as compared to an under-trial? Should the courts go out of the way to stay the conviction or suspend execution of the order

under appeal when no Fundamental or other Constitutional right of the convict would be abrogated if a stay were not granted? To our mind, the answers, as traced through the aforesaid legal and constitutional framework, would unerringly be in the negative. All the courts of law are bound by the preambular promise of the Constitution of India to provide equal treatment to one and all before them if they are similarly placed. Any differentiation in approach and outcome ought to stand on solid foundation.

49. The incidents on the occurrence of which a member of Parliament could stand disqualified 'by the Constitution' are specified in clauses (a) to (d) of Article 102(1) whereas a disqualification owing to conviction recorded by a competent court of law is a measure 'under the Constitution' read with the RoP Act. If a disqualification 'by the Constitution' or 'under the Constitution' is contrasted with disqualification incurred by a convict to continue as holders of public offices or the office of a director of a company 'by a statute', to wit, the NGT Act, the Human Rights Act or the Companies Act, or to continue in service either by Article 311 of the Constitution or by the discipline rules of public institutions, for eg., the one in ***K.C. Sareen*** (supra) and ***Balakrishna Dattatarya Kumbhar*** (supra), there can be no doubt that the standard for staying/suspending the former disqualification (brought about by or under the Constitution) has to be pegged at a level higher than the latter disqualification (brought about by the statute/rule) not only because of the Constitutional scheme but also because of the position of trust and confidence that a parliamentarian holds.

50. It is perhaps indubitable that the electorate invests not just their votes but also their expectations, trust and faith in the individuals they elect to represent them. Any compromise in the integrity of these representatives can be viewed as a betrayal of this trust. The electorate's willingness to be represented by a parliamentarian who has been disqualified by reason of a conviction on a criminal charge of moral turpitude cannot, therefore, be presumed. Rather, representation by such parliamentarian could breach the trust and confidence that was reposed by those who voted him to power. The trust placed on elected representatives is conditional on their continued adherence to the principles and laws governing their role. Disqualification mechanisms serve as a crucial safeguard to rectify any breach of such adherence. By promptly addressing instances such as the one under

consideration, the democratic system aims to maintain the credibility and legitimacy of the elected bodies. This process is fundamental to ensure that the will of the people, expressed through their votes, remains untainted and reflects a genuine mandate.

51. If a member of the Lok Sabha is convicted and hence stands disqualified from membership, it is bound to create a vacuum and the electorate he represents would stand unrepresented. This is not peculiar to any one member but common to all members suffering conviction if at all. Creation of a vacuum is envisaged by the Constitution as well as the RoP Act, with a corresponding obligation to fill up the vacancy caused in the manner authorised by law. The remedy which was earlier provided to a disqualified member [sub-section (4) of section 8, RoP Act] no longer survives. Extraordinary circumstances put forth by an elected member suffering a disqualification and urging consideration of his case for staying a conviction must necessarily involve a level of exceptionality which is beyond the routine. In any case, the lack of representation of the electorate stemming from the vacancy can always be addressed by organizing an immediate by-election. Hence, it seems to be debatable whether mere lack of representation of the electorate should at all be deemed to be an exceptional reason for stay of a conviction or suspension of execution of a conviction.

52. A summary of the above discussion is that allowing a convicted parliamentarian to attend parliamentary proceedings could not only be derogatory to the dignity of the Parliament but also derogatory to the good sense and wisdom of the people who elected such parliamentarian. The robust democratic foundation envisioned in the Constitution finds its purest manifestation in the RoP Act; the democratic spirit inherent in the Constitution, therefore, pervades through section 8 of the RoP Act, giving primacy to nothing but the rule of law. Against this backdrop, the standard applied to stay the conviction of a parliamentarian ought to attract a higher standard and the disability stemming from the conviction cannot be forestalled using the identical standard prescribed for suspending the execution of the sentence or order appealed against. In view of a parliamentarian occupying a coveted position of trust and confidence, a more stringent standard is imperative to suspend the conviction. Even if

not subject to a heightened standard, the standard must not be lowered in cases where the requisites laid down by precedents are not followed, and under no circumstances should it be relaxed solely on account of the parliamentarian's elevated status. While the standard for suspending a conviction is contingent upon the unique facts and circumstances of each case, it remains unequivocal that regardless of the individual seeking a stay of conviction, only under exceptional circumstances, as demonstrated before an "Appellate Court" wielding authority under section 389(1), Cr. PC, could a stay of conviction be granted but obviously based on reasons to be recorded by such court in its order.

53. With these prefatory words, I move on to decide the question noted at the beginning of this judgment.

54. Based on the submissions made by Dr. Singhvi, the impression sought to be given by the appellant is that his is an exceptional case and grant of relief, as claimed, is merited because (i) the judgment and order of the Trial Court recording conviction against him is latently and patently infirm; (ii) Ghazipur constituency, represented by him in the Lok Sabha for the term 2019-2024, would go unrepresented during the rest of the term; (iii) he would lose his Constitutional right to contest the forthcoming elections scheduled in 2024; and (iv) finalising and completing the more than two dozen projects initiated by him under the MPLAD Scheme would be adversely affected, so much so that irreversible harm and injustice is inevitable.

55. It is no doubt true that if a judgment of conviction is outrageously in defiance of reason and logic and appears to be unsustainable without elaborate arguments being required to be advanced to satisfy the Court in that behalf, the same could afford a ground for suspending the execution of the conviction or, in a rare situation, even for staying the conviction. In the latter case too, however, the infirmities in the judgment of conviction *per se* would not be enough to justify a stay. The convict seeking stay is required not only to make a distinct prayer for stay but he is also obliged, in view of the long line of precedents, to plead irreversible consequences that could befall him if the stay were not granted. Such pleaded consequences would then have to be examined with a view to ascertain whether something very harmful or untoward or serious would happen, which is irreversible. At the same time, the court ought to be careful not to express a view which even

directly or indirectly has an effect on the decision-making process at the time the appeal is decided. However, the present is not such a case where at this stage it can be contended with the requisite degree of conviction that the judgment and order dated 29th April, 2023 of the Trial Court, in no case, would be sustained by the High Court; hence, it is prudent to stay away from examining whether the judgment recording conviction suffers from such infirmities so as to warrant a stay of conviction. That is a matter for the High Court to examine at the first instance and any view, for that matter even a *prima facie*, at this stage, could prejudice a party to the appeal. It is, therefore, left to the High Court to take a call on sustainability or the lack of it *qua* the impugned judgment and order.

56. While endeavouring to consider the prayer made before this Court for stay of conviction, and an altogether new prayer for stay of the notification issued by the Lok Sabha Secretariat published in the Gazette of India dated 1st May, 2023, the settled principles of law as well as a proper understanding of the Constitution and the RoP Act, particularly in the light of the decisions of this Court as to the right 'to elect' as well as the right 'to be elected', have to be borne in mind. Such an endeavour would also necessarily require taking note of the submission of learned ASG that the grounds now urged before this Court by the appellant of the consequences that he is likely to suffer if the conviction be not stayed, and the new prayer, were never urged/made before the High Court.

57. It was pithily stated by this Court in ***Jyoti Basu v. Debi Ghosal***[22] that:

> "8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

22 (1982) 1 SCC 691

58. In ***Pradeep Kumar Sonthalia v. Dhiraj Prasad Sahu***[23], a 3-Judge Bench of this Court while approving ***Jyoti Basu*** (supra) observed that what one has to keep in mind while interpreting the phrase appearing in section 8(3) is that, in cases of this nature, the Court is not dealing with a Fundamental Right or a common law right.

59. Further, the law is crystal clear that the right to represent a constituency cannot be construed as a Fundamental or an absolute right. In ***Ashish Shelar v. Maharashtra Legislative Assembly***[24], another 3-Judge Bench of this Court, dealing with the suspension of certain members of the Legislative Assembly of Maharashtra, observed thus:

> "60….It is true that right to vote and be represented is integral to our democratic process and it is not an absolute right. Indeed, the constituency cannot have any right to be represented by a disqualified or expelled Member."

60. As the precedents on similar controversies would reveal, this is not the solitary instance of a (disqualified) member of the Lok Sabha who, in a bid to escape from the operation of law, is seeking refuge in purported irreversible consequences to be suffered by his constituents. It is unfortunate that in a democracy of this magnitude, criminalisation has always been a ubiquitous parasite affecting democratic principles and ideals. In this light, this Court has had the occasion to decide matters involving myriad forms of criminalisation of politics; however, in no manner can the mandate of the people be pitted against that of a statute simply to nullify such disqualification. This essence of the appellant's argument, when juxtaposed with the purpose of the RoP Act, pales into insignificance being a bizarre attempt to use the electorate as a shield to maintain incumbency against clear statutory intent.

61. In a functional democracy, the electorate's right to have its elected representative voice its interests before the Parliament/Legislative Assemblies is a cornerstone of the system. This is why the factor of the electorate going unrepresented, in case a conviction recorded against an

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elected representative is not stayed, assumes some importance. However, one cannot simply brush aside that those who voted in favour of the appellant must have reposed full faith and confidence in him, with the thought that their interests would be best served if he were elected. Out of these electors, there could be some who may not be willing to have their interests represented by the appellant who has been convicted, not to speak of the cross-section of the electorate who voted against him and who, in all probability, would like to have the voice of such tainted member silenced for all intents and purposes. In such fact situation, should a convict merely because of his status as a member of the Lok Sabha/Legislative Assembly, particularly when only a few months remain for a new Lok Sabha to be formed, be given special treatment when in ordinary circumstances, such treatment may not be available to the common citizen? The answer to this question, I am inclined to think, is a simple "NO" unless, of course, it is shown that grave injustice and irreversible consequences would follow a refusal by the competent court to stay the conviction.

62. It has neither been shown from the application filed before the High Court under section 389(1), Cr. PC that the appellant did specifically pray for stay of the conviction nor did I find the same therein; hence, question of the appellant suffering grave injustice and irreversible consequences would have to take a back seat, considering the absence of any such specific prayer. This is the first, though not the foremost, ground for not considering the prayer of the appellant favourably.

63. Moving on, it is paramount that sight is not lost of the fact of disqualification arising under section 8 of the RoP Act which indeed is the ramification – a statutory corollary of sorts – of the conviction and sentence imposed by the Trial Court. By the time the appellant approached the High Court with the application under section 389(1), Cr. PC sometime in the second week of May, 2023, his disqualification had taken effect pursuant to the Notification of the Lok Sabha Secretariat being published in the Gazette of India dated 1st May, 2023. In view of the observation of the Constitution Bench in ***K. Prabhakaran*** (supra), the High Court having been approached could have, exercising jurisdiction under section 389(1), only suspended execution of the conviction or the order appealed against. Even if the High Court exercised the jurisdiction under section 389(1) or

its inherent jurisdiction under section 482, Cr. PC to stay the conviction, the disqualification that had taken effect and notified *vide* the Gazette Notification would continue to remain unaffected unless the conviction itself was stayed. Realising that the appellant did not specifically pray for stay of conviction before the High Court and that a stay of the notification is essential, wise counsel must have dawned on the appellant, for, it is found that a challenge to such a notification has been laid for the first time in this appeal. It is understandable that despite such notification having seen the light of the day when the appellant had approached the High Court, the same could not have been challenged and a stay thereof obtained in an application under section 389, Cr. PC. In the absence of any prayer for stay of conviction before the High Court to offset the said notification from remaining operative, no order could have been passed by the High Court staying the conviction. Incidentally, it was also not the prayer of the appellant before the High Court that the conviction be stayed exercising power under section 482, Cr. PC. If the appellant is to be allowed to continue as a member of the Lok Sabha without there being a stay on his conviction, which is also not the prayer here, it would tantamount to usurpation of an office through membership by the appellant without having any right thereto.

64. Still further, considering the principles of law laid down in the precedents noticed above and the factual scenario, one cannot be unmindful of the fact that the appellant did not demonstrate any exceptional circumstance before the High Court to warrant a stay of the conviction, assuming that he did pray so. Despite being obliged, in terms of the *dicta* in ***Rama Narang*** (supra), ***Ravikant S. Patil*** (supra) and ***Lok Prahari*** (supra), the appellant has cared less to be diligent. The present case manifests the tardy and lethargic attitude of the appellant of having clearly failed to plead any specific consequences to show that his case falls under an exceptional category and thereby warrants a stay of the conviction. The four-page application which the appellant filed before the High Court seeking a stay of conviction under section 389(1) of the Cr. PC, was accompanied by an affidavit spread over twelve pages and containing thirty-five paragraphs. I have read the affidavit in between the lines. More than a couple of paragraphs are devoted to pointing out the infirmities in the judgment of the Trial Court leading to the appellant's conviction, which possibly are

also the grounds of appeal. In only one of the paragraphs did the appellant plead his disqualification by reason of the notification having been issued by the Lok Sabha Secretariat and *vide* the concluding paragraph, the High Court was implored to suspend the sentence awarded by the Trial Court together with the conviction.

65. The appellant is an accused in a couple of criminal cases and his conduct is either under investigation or he is standing trial. Not a single mitigating factor was shown by the appellant that could lend support to his case. In such circumstances, can it be concluded that the appellant's case qualifies as "exceptional", thus justifying a stay of the conviction?

66. The present case, as in ***K.C. Sareen*** (supra) and ***Balakrishna Dattatraya Kumbhar*** (supra), beckons that stay of conviction of the appellant in the circumstances as were presented before the High Court as well as before this Court, could have serious aspersions cast on the integrity of the democratic institutions. Such a power of stay, as and when exercised by the courts, would carry with it the obligation of being extremely circumspect and abundantly cautious necessitating consideration in a judicious manner of all pleaded facts and circumstances. Notwithstanding that the appellant is a (disqualified) member of the Lok Sabha and without the essential pleadings, he cannot legitimately urge that holder of one public office is different from the holder of another public office like the ones referred to above and, therefore, he is entitled to any special treatment. If at all one was to go down that rabbit hole, then the higher burden resting on the shoulders of elected representatives would likely not serve the appellant's case. Thus, inadequate and insufficient pleadings, as assigned by the High Court, is considered a valid ground for upholding the impugned order.

67. Though the fundamental flaw of absence of pleadings in the appellant's case exposes its vulnerability since its very inception, nonetheless, I am inclined to explore an additional facet flowing from Dr. Singhvi's forceful argument that the appellant, being an elected member of the Lok Sabha, stands on the brink of losing the right to represent his constituency in the near future, apart from potentially silencing the voice of the electorate that had previously elected him.

68. As enumerated above, law is well-settled that one needs to plead irreversible consequences to have the conviction stayed, and by extension,

get the disqualification lifted. The majority judgment penned by Hon'ble Surya Kant, J. does not also propose to allow the appellant to participate in the remaining sessions of the 17th Lok Sabha.

69. Be that as it may, the claim of the appellant that he would be ineligible to contest the elections to the next Lok Sabha due next year, on account of the conviction suffered by him, has also failed to impress me. Adhering to the dictum in ***Rama Narang*** (supra) and the other decisions following it, and at the risk of repetition, it is observed that nowhere in the application under section 389 did the appellant plead of there being a real prospect of his projection as a candidate from Ghazipur or any other constituency by the party to which he owes allegiance or even as an independent candidate and/or that should his right to contest the election be scuttled by reason of the conviction, irreversible consequences would ensue.

70. The absence of even a whisper in the pleadings before the High Court or this Court that there is a real likelihood of the appellant contesting the elections for the 18th Lok Sabha in 2024 notwithstanding, the oral submission in this behalf does not advance his case either. According to Dr. Singhvi, the appellant would stand to lose the right to represent his constituency on the basis of an untenable conviction and, hence, the same should be stayed. The right of the appellant to represent a constituency or that of a constituency to be represented by the appellant is not a Constitutional right under Article 326 of the Constitution, as faintly submitted on behalf of the appellant in the written note of arguments. Needless to say, Article 326, which is an integral part of Part XV of the Constitution dealing with 'Elections', declares that the election to the Lok Sabha and the Legislative Assembly shall be on the basis of universal adult suffrage. What the laws for conducting elections provide is the manner and mode of elections as well as the conditions and modalities which a prospective candidate is required to follow and abide by. It appears from the rejoinder filed by the wife of the appellant to the counter affidavit of the respondent before the High Court that the appellant is a septuagenarian, suffering from diverse ailments. The health condition of the appellant having been cited as a ground for grant of bail, it does cast a doubt on his ability to represent a whole constituency coupled with the undeniable circumstance that the appellant will only advance in age with time. Such being the case pleaded before the High Court and even

assuming *arguendo* that the appellant intends to contest the 2024 election, the same is too remote a circumstance that could reasonably be covered by exceptional circumstances warranting a stay of his conviction, far less putting in jeopardy any basis of the Constitution as held in ***K. Anandan Nambiar*** (supra). Dr. Singhvi's argument, though attractive at first blush, needs to be rejected in view of a combined reading of ***Jyoti Basu*** (supra), ***Pradeep Kumar Sonthalia*** (supra) and ***Ashish Shelar*** (supra) where it has been unequivocally laid down that the right to elect and to be elected are statutory rights and not absolute.

71. Heavy reliance placed by Dr. Singhvi on the decision in ***Rahul Gandhi*** (supra) to support the claim of the appellant for staying his conviction appears to be misplaced. The appellant herein is convicted under section 3(1) of the Gangsters Act and sentenced to four years' imprisonment. Section 3(1) thereof prescribes a maximum punishment of ten years and a statutory minimum of two years. Consequently, upon a conviction under section 3(1) of the Gangsters Act being recorded, bereft of judicial discretion, an accused is mandatorily subject to a minimum two-year sentence, triggering an automatic disqualification under section 8 of the RoP Act. In ***Rahul Gandhi*** (supra), while staying the conviction, it was specifically noted by this Court that the maximum sentence of imprisonment for two years was imposed by the trial court without any accompanying rationale. In contrast, in the present case, where the maximum sentence could be ten years and the appellant was sentenced to four years' imprisonment, and that too, in the light of his plea for leniency, the reasoning for granting relief in ***Rahul Gandhi*** (supra) remains distinguishable and categorically fails to offer any support to the appellant. Insofar as the observation therein regarding the ramification of sub-section (3) of section 8 of the RoP Act being wide-ranging and would affect the electorate because of absence of a representative are concerned, it is noted that the same is an observation in the passing and does not constitute the *ratio decidendi* of the decision. On the contrary, the main reason for grant of relief in ***Rahul Gandhi*** (supra), as noted above, was the absence of reasons to impose the maximum sentence. Therefore, such a decision lends no assistance to the appellant.

72. The reasoning adopted by the 2-Judge Bench in ***Naranbhai Bhikhabhai Kachchadia*** (supra) resulting in the ultimate relief that was granted, I am minded to hold, turned more on the facts of the case rather

than expositing a principle of law worthy of being followed as a precedent. Thus, the said decision falls short of providing appropriate guidance.

73. What remains is the claim of pending projects under the MPLAD Scheme.

74. One may suspect that, for no cause or perhaps for no good cause, the appellant deemed it fit not to make any mention of any project, far less specific mention, pertaining to the MPLAD Scheme before the High Court. Interestingly, although Dr. Singhvi raised this point in course of his oral arguments, the same is conspicuous by its absence in the written note of arguments. Importantly, attention was not drawn to any provision in the relevant MPLAD Scheme which is intended to address any contingency having regard to the appellant's seat prematurely falling vacant by reason of his conviction. Absolutely no explanation was proffered by the appellant as to how any project initiated by him under the MPLAD Scheme would suffer owing to his absence, especially in the sunset of the life of the present Lok Sabha. *Inter alia*, the absence of any such pleadings bears heavy against the grant of stay of the appellant's conviction where no sufficient irreversible consequences to the electorate has been made out at such time when fresh elections are only but a few moons away.

75. Despite the appellant not having invited attention, I had the occasion to peruse the 'MPLAD Scheme Guidelines, 2023' ("MPLADS Guidelines", hereafter) to understand the impact of a premature vacancy arising on a seat for a particular constituency. Portion of the MPLADS Guidelines, considered relevant, is reproduced below for convenience:

> "10.4.7 In case of sudden death or resignation of a Member of Parliament, notwithstanding the allocation formula in para 10.4.3 above, the works which may have been duly sanctioned by the Implementing District Authority as per original eligibility of that Member of Parliament, shall be completed. The entitlement for new incoming Members of Parliament would start afresh in accordance with the said formula."

76. It is not necessary to closely examine the MPLAD Scheme or the MPLADS Guidelines, yet, Clause 10.4.7 is worth touching upon. It stipulates that upon the death or resignation of a member of

Parliament, the works duly sanctioned as per their original eligibility under the MPLADS Guidelines shall be completed. Clause 10.4.7 does not expressly refer to a vacancy caused by disqualification. It is, however, presumed that even in a case of disqualification of a member of Parliament, the projects initiated by him are not abandoned but taken to its logical end in the manner stipulated in Clause 10.4.7. Such a provision makes this Court wonder as to the role to be played by a member of Parliament, especially at such a belated stage in the term, presuming that the machinery has already started functioning.

77. I am afraid, in case weight towards allowing the present appeal is lent, it could unwittingly cater to condoning the consequences looming large before the appellant arising from his conviction, rather than addressing the purported irreversible consequences faced by the constituency.

78. Indeed, the courts have acknowledged that legislators bear a special duty towards their constituents, and failure to secure a stay of conviction may lead to the loss of the opportunity to contest elections. In isolation, this consideration might serve as a compelling reason to grant a stay of conviction. However, when a parliamentarian/legislator seeks a stay of conviction, he shoulders an additional responsibility of demonstrating how his constituents are likely to endure adverse consequences if the conviction is not stayed. A parliamentarian/legislator cannot be allowed to obtain a 'double advantage' where he implores the Court for a stay of conviction being a parliamentarian/legislator while simultaneously failing to provide full disclosure of consequences regardless of what the reasons are, whether due to inadvertence, negligence, or mistake. Failing to do the same, the law should be allowed to take its own course.

79. As the court of last resort, it is the bounden duty of this Court to uphold the rule of law which entails equality before the law and equal subjection of all classes to the ordinary law of the land. No court, much less this Court, should feel chained by misplaced sympathy towards assumed or imagined ramifications on the constituency of the parliamentarian/legislator who has been convicted.

80. It would not be out of place to quote Dwight D. Eisenhower, the 34th U.S. President, perhaps in times when democracy faced its toughest test. He said: *"the clearest way to show what the rule of law means to us in*

everyday life is to recall what has happened when there is no rule of law". This serves as an important reminder. Adoption of the course charted by Dr. Singhvi that a mere disqualification (without anything more being on record) should be considered as amounting to "irreversible consequences", would inevitably result in this Court sailing in an unnavigable sea of generalization where, upon disqualification suffered due to the conviction, a parliamentarian would be entitled to an automatic stay on his conviction without the requisite pleadings. While recognizing the importance of the electorate's representation, it is necessary to maintain a balance between this right and the enforcement of legal accountability within the democratic framework.

81. For the reasons aforesaid, I regret my inability to be *ad idem* with the majority insofar as grant of relief to the appellant is concerned. I find no reason to interfere with the impugned judgment and order of the High Court. The appeal ought to fail and the same is hereby dismissed.

82. The High Court may, however, decide the appeal on its merits at an early date, subject to its convenience.

Headnotes prepared by:
Nidhi Jain

Appeal partly allowed.