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

Reserved on: 20th May, 2025
Pronounced on: 1st August, 2025

\+ CRL.A. 14/2025

RAMESH KUMAR JAYASWAL .....Appellant

Through: Mr. Siddharth Aggarwal, Sr. Adv., Mr. Faraz Maqbool, Mr. Rahul Pandey, Ms. Sana Juneja, Ms. A. Sahitya Veena, Ms. Vismita Diwan, Ms. Arshiya Ghosh, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION .....Respondent

Through: Mr. R.S. Cheema, Senior Advocate with Ms. Tarannum Cheema, Mr. Akshay Nagarajan, Mr. Akash Singh and Mr. Sadeev Kang, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

CRL.M.A. 185/2025 (*Ad-Interim* Stay/Suspension of Impugned Judgment of Conviction & Order on Sentence)

1. The present application under Section 430 read with Section 528 of the of the Bharatiya Nagarik Suraksha Sanhita, 2023, (for short, 'BNSS'), has been filed seeking *ad-interim ex-parte* stay of the impugned judgment of conviction and order on sentence dated 09.12.2024 and 11.12.2024 respectively *qua* the present appellant/applicant.

2. *Vide* the impugned judgment of conviction, the appellant (A-2) along with his brother/co-convict, Manoj Kumar Jayaswal (A-1) and M/s AIPL (A-3), has been convicted by the learned Special Judge, (PC Act) (CBI), Coal Block Cases-01, RADC, New Delhi, in Case No. CBI-41/2020, arising out of FIR No.: RC 221 2016 E 002, under Section 120B read with Section 420 and Section 471 of the Indian Penal Code, 1860, (for short, 'IPC'), registered with Branch, CBI/EO-III/New Delhi, for the offences punishable under Section 420 of the IPC and Section 120B and Section 120B read with Sections 471/420 of the IPC and *vide* order on sentence dated 11.12.2024, the appellant has been sentenced to undergo rigorous imprisonment for 3 years for each offence along with a total fine of Rs. 20 Lakhs and in default of payment of fine, to undergo simple imprisonment for a period of 4 months for each offence. All the sentences were directed to run concurrently.

3. In the present case, the appellant along with other co-convicts has been convicted in Coal Scam case. He was found guilty of being in conspiracy with convict no.3, Abhijeet Infrastructure Private Ltd. ("AIPL") and convict no.1, Manoj Kumar Jayaswal, for cheating the 24th Screening Committee, Ministry of Coal, Ministry of Steel and the State of Jharkhand while having knowledge that numerous forged documents were used on behalf of AIPL for the purpose of procuring the Brinda, Sisai Coal Blocks.

4. As per the case of the prosecution before the learned Trial Court, the appellant had made false representations and was having knowledge of forged documents being furnished to the Screening Committee and the Ministry of Steel for procuring the recommendation of the 24th Screening Committee for the Brinda, Sisai, Dumri, underground mining of non-coking Coal Blocks. It was alleged that the appellant had misrepresented himself as Director/Joint Managing Director of AIPL and was also engaged in acts which amount to a betrayal of trust of shareholders by a key-functionary in a company. It was further alleged that from 30.10.2003, the appellant was the authorized signatory of the convict no.3, company and prior thereto, he had falsely impersonated himself out to be authorized signatory by addressing letter dated 15.07.2003 to the Ministry of Coal and Ministry of Steel. One other letter dated 30.08.2003 is written by the appellant, addressed to the Chairman Screening Committee wherein, he had falsely represented himself to be authorized signatory of AIPL. As per the case of prosecution, the appellant had repeatedly represented himself to be in official position which he did not hold*, i.e.,* Director/Joint Managing Director of the Convict Company, M/s AIPL (A-3), before the 18th, 21st, 22nd and 24th Screening Committee Meetings which were held in 2003, despite the fact that he had already resigned from the said position in 2002.

5. Learned Senior Counsel for the appellant, at the very outset, has drawn the attention of this Court towards the order on charge dated 03.06.2022 and chargesheet and submitted that both the CBI as well as the learned Trial Court

has found that there was a separation in entire family business in 2002 whereby the appellant along with his father and elder brother, separated and formed "Neco Group" and convict no.1, Manoj Kumar Jayaswal, formed AIPL, convict no.3, which was headed and run by him entirely. It was the convict no.1(A-1) who was handling all the affairs of AIPL including coal allocation. The present offences were committed in 2004 and not in 2003 and during the said relevant point in time, the present appellant was not the director of AIPL and the convict no.1 was running AIPL on his own and was responsible for the alleged submission of forged documents to Ministry of Steel and Ministry of Coal and forgeries committed at his behest. He has further submitted that the convict no.1 was the direct beneficiary of coal block allocation to AIPL and after securing of same, all post-allocation correspondence to various authorities including the Ministry of Coal were sent by him. It is further pointed out that in the investigation of the CBI as also the order on charge passed by learned Trial Court primary allegations were against the convict no.1, Manoj Kumar Jayaswal, brother of the present appellant.

6. Learned Senior Counsel has further submitted that as per the case of CBI, the appellant had misrepresented himself as Director/Joint Managing Director of AIPL and was engaged in acts which amount to the betrayal of trust of shareholders by a key-functionary in a company, however, none of the prosecution witnesses examined before the learned Trial Court has deposed anything incriminating against the present appellant. It has been contended

that by way of testimonies of prosecution witnesses, it has been established that convict no.1 was running affairs of AIPL and post the separation of business in 2002, he had exclusive control over its affairs including coal allocation. Attention of this Court has been drawn towards the fact that the learned Trial Court had formulated only one triable issue *qua* the present appellant that "he has to explain his presence during the screening committee meeting and has to explain during trial the recordings in the minutes…..". It is submitted that in respect of said issue, the prosecution had examined only one witness*, i.e.,* PW-14, AK Shrivastava, and the other person, V.S. Garg, was dropped as witness by the prosecution/CBI during the course of trial. It is pointed out that PW-14, in his testimony, had stated that the questions posed by 24th Screening Committee regarding AIPL were answered by convict no.1. Further, PW-14 has not named the appellant as the person who was nominated on behalf of AIPL to answer queries before the 24th Screening Committee and the prosecution has not cross-examined him nor any clarification was sought *qua* this issue and the learned Trial Court had erred in convicting the present appellant on the basis of piecemeal appreciation of testimony of the said witness. It is further submitted that the key prosecution witness regarding the forgery of documents was PW-20 and he had deposed that all forgeries were committed at the behest/asking of convict no.1 and further that, the present appellant has not been incriminated at all by PW-20 in this regard. It is further submitted that the prosecution has miserably failed to prove that the present appellant had knowledge of any forged documents, let alone establish that he had portrayed himself with any authority on behalf of

AIPL before the 24th Screening Committee, by any submission or otherwise at the relevant point in time.

7. Learned Senior Counsel has further submitted that the learned Trial Court at around the time of reserving of judgment for pronouncement had embarked on an enquiry and had summoned records pertaining to other coal scam cases and other screening committee meetings and had based its conviction on the said records which is violation of principles of fair trial as the said records were not led during prosecution evidence nor they were put to the appellant while his statement under Section 313 of the CrPC was recorded. It is pointed out that learned Trial Court had in a very callous manner put the said record to the appellant and he had firmly stated that nothing incriminatory was found by the learned Trial Court as well as the prosecution at the time of framing of charge from the said records. It is, thus, contended that the impugned judgment of conviction suffers from various self-contradictions and illegal findings as the prosecution has failed to cogently prove before the learned Trial Court that the present appellant was managing the affairs of AIPL (A-3) or he was having knowledge of the forgery of the documents and was main beneficiary of the AIPL's scam.

8. Learned Senior Counsel has further submitted that the operation of impugned judgment of conviction is to be stayed as the same is based on erroneous considerations and its operation will lead to irreversible

consequences which would not be rectified in future, in case, he is acquitted of the charges levelled against him in the present appeal. Further that, the appellant is currently Managing Director of a listed entity*, i.e.,* M/s JNIL, which is India's one of the largest Alloy Steel Manufacturers and serves critical industries such as automotive, power, engineering, defense and railways. It is further submitted that the appellant has played a pivotal role to the revenue growth of JNIL which has a workforce of more than 9,500 workers and their livelihoods are dependent on the successful running of the said company. The appellant has also played a significant role in fostering industrial development, creating employment, promoting entrepreneurship, and inspiring countless individuals to become job providers in *Vidarbha* Region's (Maharashtra) and Chhattisgarh's industrial growth thereby making substantial contribution to the society. The significant investment from public equity shareholders including global investors is at stake as JNIL has secured its lenders on the basis of the personal guarantee of the appellant and the impugned judgment of conviction is a major impediment in the repayment of its obligations as the appellant has now become a subject to the disqualification emanating from Section 196 of the Companies Act, 2013, on account of being convicted by a Court for offence and sentenced for a period of more than six months. It is further submitted that this disqualification will also create issues on financial closure for viable projects including scheduled Debt Refinance and will also be responsible for plummeting the M/s JNIL's hard earned-reputation and credit ratings. It is, thus, contended that the appellant may be protected from such disqualification for being appointed as Managing Director of JNIL by staying the operation of the impugned

judgment of conviction. Reliance has been placed on **Afjal Ansari v. State of Uttar Pradesh**[1], to contend that the decision in the said case was rendered primarily on two grounds, firstly, that there was an existing benefit/post/privilege to protect and secondly, the existing/ongoing nature of the said post made the appellant qualify the test of suffering "irreversible consequences" if suspension of judgment of conviction is not granted. Learned Senior Counsel has tried to draw analogy from the said case in respect of the fact that the present appellant does have an existing post/qualification to lose, if the present application is not allowed and further, the irreversible consequences that will follow from the said decision which have been noted hereinabove.

9. Lastly, it is submitted that the appellant has deep roots in the society and has a family comprising of his wife, 2 sons, one daughter and his father and has played significant role in fostering industrial development, creating employment, promoting entrepreneurship etc., and otherwise has clean antecedents. Also, the gravity of the offence is not very high as the appellant has been sentenced to 3 years of imprisonment. It is further submitted that the hearing of the present appeal is likely to take time and the trials in other coal block cases are also pending since long. It is further submitted that the sentence of convict no.1 has already been suspended by a Coordinate Bench of this Court *vide* order dated 23.12.2024 in **CRL.A. 1186/2024**. It is further submitted that the appellant was not arrested by CBI during investigation and

[1] (2024) 2 SCC 187

he had not misused the liberty granted to him and had duly complied with all the conditions imposed by him even while travelling abroad on various occasions. It is further submitted that there has been no accusation of the appellant tampering with the evidence or influencing any witness during the course of trial. Even otherwise, the appellant has good case on merits and in case, the impugned judgment is allowed to operate, the injury to be suffered and damage to the reputation of the Companies under his management would be irreparable and irreversible.

10. Learned Senior Counsel for the appellant/applicant to support the present application has placed reliance on the following precedents: -

i) Afjal Ansari v. State of Uttar Pradesh[2];

ii) Rama Narang v. Ramesh Narang[3];

iii) State of T.N. v. A. Jaganathan[4];

iv) K.C. Sareen v. CBI, Chandigarh[5];

v) Ravikant S. Patil v. Sarvabhouma S. Bagali[6];

vi) Navjot Singh Sidhu v. State of Punjab[7];

vii) Madhu Koda v. State through CBI[8];

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[2] *Ibid; supra note 1*
[3] (1995) 2 SCC 513
[4] (1996) 5 SCC 329
[5] (2001) 6 SCC 584
[6] (2007) 1 SCC 673
[7] (2007) 2 SCC 574

viii) Madhu Koda v. State through CBI[9];

ix) Dilip Ray v. CBI[10];

x) Madhu Koda v. State through CBI[11];

11. *Per contra*, learned Senior Counsel for CBI has drawn attention of this Court towards the various provisions pertaining to the disqualifications emanating from conviction for certain offences from the perspective of Representation of Peoples Act, 1951 [12], Companies Act, 1956, and Companies, 2013. It is pointed out that Section 8 of the RPA provides for the disqualifications which follows from certain offences and the same have been classified into three categories. First being that, under Section 8(1) of the RPA, on conviction for specified offences, irrespective of the quantum of sentence, the convict shall stand disqualified in the manner prescribed. Secondly, under Section 8(2) of the RPA, three kinds of offences have been specified and lastly, under Section 8(3) of the RPA, the person may be convicted of any offence and sentenced to imprisonment of not less than 2 years. It is, thus, pointed out that the disqualification has been attached with the nature of the offence coupled with the sentence awarded under each category. Coming to the provision involved in the present case, learned Senior Counsel for CBI has drawn attention of this Court towards Section 267(c) of the Companies Act, 1956, wherein it was stipulated that, "no person is to be

[8] 2020 SCC OnLine Del 599
[9] 2024 SCC OnLine Del 7271
[10] 2024 SCC OnLine Del 2522
[11] Order dated 25.10.2024 passed by Hon'ble Supreme Court in SLP (Criminal) Diary No. 49236/2024
[12] For short, 'RPA'

appointed as Managing Director or continue as such or a Whole Time Director who has at any time been convicted by a Court of an offence involving moral turpitude". It is submitted that under erstwhile Companies Act, 1956, it was essential that the twin conditions attracting the disqualification, *i.e.,* conviction for commission of an offence and such offence is involving moral turpitude, were fulfilled. Such determination attracting disqualification was primarily dependent on the fact that the offence involved moral turpitude as a condition precedent.

12. Learned Senior Counsel for CBI has further drawn attention of this Court towards Section 196(3)(d) of the Companies Act, 2013, wherein it has been provided that, "no Company shall appoint or continue the appointment of any person as Managing Director, Whole Time Director or Manager who has at any time been convicted by a Court of any offence and sentenced for a period of more than six months" and has submitted that the provision providing for disqualification for being appointed as Managing Director, Whole Time Director, or, Manager of a Company, has undergone severe change from law in 1956 to 2013 as the disqualification stipulated by Section 267 of erstwhile Companies Act was not applicable to Manager, however, under Section 196(3)(d) of the Companies Act, 2013, such disqualification is applicable to the Manager as well. Further, now the conviction for any offence entails disqualification provided that the sentence is awarded for a period of six months for such offence. Thus, it may be concluded that the legislative intent behind such enactment was to make the provision more

stringent irrespective of the nature of the offence for which an individual has been convicted, provided that the sentence of more than six months has been provided by the Court. It is submitted that the word "shall" employed in Section 196(3)(d) of the Act of 2013 underlines the mandatory nature of the provision and the disqualification is mandatorily attracted on conviction for any offence provided that the sentence awarded is more than six months. The removal of the condition of such offence being falling within the ambit of "moral turpitude" is self-explanatory.

13. Learned Senior Counsel for CBI has submitted that the law regarding the stay of conviction is well settled that each case shall have to be decided on its own facts and within the parameters stipulated in the statute applicable to the case and there can be no general rule of uniform application. Reliance has been placed on the minority judgment of the Hon'ble Supreme Court in **Afjal Ansari (*supra*)**, wherein in paragraph 56 it was observed that the Hon'ble Supreme 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. Reliance has also been placed on **K.C. Sareen (*supra*)** case to contend that the exercise of power under Section 389(1) of the CrPC should be limited to very exceptional cases. Reliance has also been placed on **Ravikant S. Patil v. Sarvabhouma S. Bagali (*supra*)**, to contend that such power should be exercised only in exceptional circumstances where failure to

stay the conviction, would lead to injustice and irreversible consequences. Reliance has also been placed on **Rama Narang v. Ramesh Narang (*supra*)**, to contend that the present application has to be examined in the light of the provisions of Companies Act, 2013, and that the Appellate Court while granting stay or suspension of the order of conviction must examine its pros and cons. It is further submitted that **Rama Narang (*supra*)** is a case wherein, the applicant was a Managing Director and it was duly noted in the said case that statutory provisions are more stringent in case of a Managing Director as he is personally responsible for conducting the business of the company. It has further been argued that under the present provisions, conviction for any offence entails disqualification provided that the sentence awarded is for a period of more than six months. Therefore, even if, a person is convicted for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, or an offence under IPC, such disqualification will be applicable.

14. Learned Senior Counsel for CBI has further submitted that the majority judgment of the Hon'ble Supreme Court in **Afjal Ansari (*supra*)**, provided that the Court exercising power under Section 389 of the CrPC must consider that 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. It is further submitted that the decision in **Afjal Ansari (*supra*)** was rendered in different factual context as the said case was

related to a sitting member of the Parliament and the decision in said case is of no assistance to the appellant in the present case.

15. Learned Senior Counsel has also submitted that public interest impact involved in the Coal Block cases also requires due consideration of this Court while deciding the present application. Reliance has been placed on **Manohar Lal Sharma v. Principal Secretary and Ors.**[13], to show that the large number of allottees in Coal Block cases were linked with politicians and ministers or those who came with high-profile recommendations and they had misrepresented the facts and were not more meritorious than others whose claims have been rejected, but by serious manipulations and abuse, they were able to get the Coal Blocks. Reliance has also been placed on **Girish Kumar Suneja v. CBI**[14], to show that the Coal Block Allocation cases form one identifiable category cases that are distinct from other cases since they have had a massive impact on public interest and there have been large-scale illegalities associated with the allocation of coal blocks. It is, therefore, necessary to treat these cases differentially since they form a unique identifiable category and their classification is in public interest and for the public good with a view to bring persons who have allegedly committed corrupt activities within the rule of law. Further that, these cases are concerned with large-scale corruption that polluted the allocation of coal blocks and they form a clear and distinct class that need to be treated in a manner different from the cases that our justice-delivery system usually deals

[13] (2014) 9 SCC 516
[14] (2017) 14 SCC 809

with. It is further pointed out that the impact on public interest in the present case in view of Coal Block scam has also been noted by the learned Trial Court in the order on sentence dated 11.12.2024.

16. Learned Senior Counsel for CBI has further submitted that the sum and substance of the allegation against the convict no.1 and convict no.2 is that they were responsible for misrepresentation about land acquisition and securing recommendations of Ministry of Steel on the basis of forged documents as also for securing recommendation of 24th Screening Committee meeting dated 09.12.2004 for allocation of coal blocks. Attention of this Court has been drawn towards the record (Attendance Sheet) of the Screening Committee dated 09.12.2004 to show that the present appellant had appeared as director of the AIPL (A-3), convict company, and AK Srivastava, PW-14, and VS Garg were also described as General Manager (Projects) and director respectively, before the said Committee. It is further pointed out that both convict no.1 and convict no.2 were involved in a game of musical chairs to present a deceptive scenario before the Screening Committee and have interpreted the minutes of the Screening Committee to support/belie the statement of PW-14 to support their own individual cases. It is further submitted that VS Garg, whose statement was recorded as PW-29 but not examined, had stated that he was new to the company and was not aware of the issue and never dealt with the convicts and the same was the reason for not examining him before the learned Trial Court during the course of trial.

17. Learned Senior Counsel has further drawn attention of this Court towards the testimony of PW-14 and statement of the present appellant recorded under Section 313 of the CrPC to show that as per those statements, the appellant had attended the meeting of the Screening Committee and in the relevant documents had misrepresented himself as the director of the AIPL. It is further pointed out that case of the present appellant before the learned Trial Court was that he was director in so many companies that by oversight, he might have presented himself as Director of AIPL, convict no.3, before the 24th Screening Committee meeting and the same was held by the learned Trial Court to be a tactic to escape liability. Further, the appellant has not named anyone who was responding to the queries posed by the Screening Committee on behalf of AIPL. Learned Senior Counsel has further submitted that the present appellant was the promoter Director of the AIPL and at the time of 24th Screening Committee meeting, AIPL was run under the control of convict no.1 as the business in Abhijeet group was being carried out under his leadership, however, the assets were not separated by that particular point in time. The assets were allegedly separated in 2008 between the Jayaswal brothers equally and the same shows that at the time of Screening Committee meeting all four persons in the family were benefited at the time of partition of assets by allocation of Coal Blocks in favour of AIPL. This is also crucial for inferring the conduct of both the convicts with respect to the conspiracy hatched between them.

18. Learned Senior Counsel for CBI has vehemently argued that the appellant has miserably failed to disclose before this Court that he along with M/s Jayaswal Neco Ltd. is also facing prosecution under the coal allocation matters wherein he is individually an accused. This concealment by the appellant disentitles him to the reliefs sought in the present application and it is further pertinent to note that in the said case he is facing prosecution in his capacity as a key functionary of M/s JNIL. It is, thus, contended that the conviction of the appellant in the present case cannot be seen in isolation and the factum of appellant being facing trial in other coal block cases in his capacity as key personnel of M/s JNIL cannot be ignored by this Court at this stage in view of the larger public interest and wider public impact of the coal block cases on the society. Reliance has also been placed on the judgment of Coordinate Bench of this Court in **Madhu Koda v. State through CBI**[15], to contend that the application seeking similar reliefs was dismissed by the said Court despite recording a finding that there was a *prima facie* case in favour of the appellant/applicant therein. Thus, it is prayed that the present application be dismissed.

19. In rejoinder thereto, learned Senior Counsel for the appellant has submitted that the latter is 65 years of age and is presently Managing Director of a listed company wherein public shareholders are involved. He has handed over a chart showing the status of the appeals filed in the cases arising out of the Coal Block Scam cases and the same shows that 43 cases are pending

[15] *Ibid; supra note 8*

even after 12 years. Learned Senior Counsel has further relied on the ratio of Hon'ble Supreme Court in **Rama Narang (*supra*)** in respect of the exercise of power to stay of conviction wherein the person was a Managing Director of a public company. He further submitted that the present appellant duly satisfies the twin test of loss of an existing privilege/qualification and irreversible consequences/damages as laid down by the Hon'ble Supreme Court in **Afjal Ansari (*supra*)**. It is, thus, prayed that the present application be allowed and the operation of the impugned judgment of conviction be stayed by this Court *qua* the present appellant.

20. Heard learned Senior Counsels for the appellant as well as the CBI/respondent and perused the record.

21. The Hon'ble Supreme Court in **Afjal Ansari (*supra*)** has set out the parameters to be considered for suspension of conviction under Section 389(1) of the CrPC. In the said judgment, the Hon'ble Supreme Court was dealing with the case of the appellant therein who had served as a Member of Legislative Assembly in Uttar Pradesh for five consecutive terms and as a Member of Parliament for two terms. Until the disqualification following the judgment rendered by the learned Trial Court *qua* him, the appellant therein was an incumbent Member of Parliament at the time when he incurred disqualification. Dealing with the aforesaid facts, the Hon'ble Supreme Court had observed and held as under: -

"14. 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)CrPC. Section 389(1) enjoins 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)CrPC, which is articulated as follows:

> "**389.** ***Suspension of sentence pending the appeal; release of appellant on bail***.—(1) Pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond."

15. It becomes manifestly evident from the plain language of the provision, that the appellate court is unambiguously vested with the power to suspend implementation of the sentence or the order of conviction under appeal and grant bail to the incarcerated convict, for which it is imperative to assign the reasons in writing. This Court has undertaken a comprehensive examination of this issue on multiple occasions, laying down the broad parameters to be appraised for the suspension of a conviction under Section 389(1)CrPC. There is no gainsaying that in order to suspend the conviction of an individual, the primary factors that are to be looked into, would be the peculiar facts and circumstances of that specific case, where the failure to stay such a conviction would lead to injustice or irreversible consequences. [*Ravikant S. Patil* v. *Sarvabhouma S. Bagali*, (2007) 1 SCC 673, paras 15 and 16.5 : (2007) 1 SCC (Cri) 417] **The very notion of irreversible consequences is centred on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case.**

16. 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 judgment dated 3-7-2019. Thereafter, the new FIR was registered, in which the appellant had been convicted

by the trial court under Section 3(1) of the U.P. Gangsters 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.

17. Upon careful consideration of the judgment of the trial court and the order [*Afjal Ansari* v. *State of U.P.*, 2023 SCC OnLine All 2818] passed by the High Court, it appears to us that, *firstly*, the impugned order [*Afjal Ansari* v. *State of U.P.*, 2023 SCC OnLine All 2818] 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 [*Afjal Ansari* v. *State of U.P.*, 2023 SCC OnLine All 2818] 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 [*Afjal Ansari* v. *State of U.P.*, 2023 SCC OnLine All 2818] has meticulously highlighted that in the various FIRs that had been registered against the appellant, either he was not charge-sheeted or the investigating agencies had exonerated him.

18. 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 [*Afjal Ansari* v. *State of U.P.*, 2023 SCC OnLine All 2818] 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.

19. This Court has on several occasions opined that there is no reason to interpret Section 389(1)CrPC in a narrow manner, in the context of a

stay on an order of conviction, when there are irreversible consequences. Undoubtedly, *Ravikant S. Patil* v. *Sarvabhouma S. Bagali* [*Ravikant S. Patil* v. *Sarvabhouma S. Bagali*, (2007) 1 SCC 673, para 15 : (2007) 1 SCC (Cri) 417] , 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.**

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

21. 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 reappraisal 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 U.P. 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.

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> **27.** It is therefore imperative to weigh the competing interests presented by both the appellant and the State. This case pertains to
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> (*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
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> (*b*) the State's pursuit of a conviction under Section 3(1) of the U.P. 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."
>
> (emphasis supplied)

22. In **Rama Narang (*supra*)**, the three-judge Bench of the Hon'ble Supreme Court was dealing with the case of the appellant therein who was Managing Director of a company and was convicted for offences punishable under Section 120B and Section 420 read with Section 114 of the IPC which was stayed by Delhi High Court under the provisions of Section 389(1) of the CrPC. In the said case, the issue which arose for consideration was whether the appellant therein was liable to be visited with the consequence of Section 267 of the Companies Act, 1956, notwithstanding the interim order passed by the Delhi High Court while admitting the appellant's appeal against his conviction and sentence passed by learned ASJ and was, thus, eligible to hold

office as a Managing Director. The Hon'ble Supreme Court had observed and held under: -

> "**14.** The provisions contained in the Companies Act have relevance to the management of the affairs of companies incorporated under that law. The operation of Section 267 would take effect as soon as conviction is recorded by a competent court of an offence involving moral turpitude. Sections 267, 274 and 283 referred to earlier constitute a code whereunder a Director, Managing Director and the whole-time Director are visited with certain disqualifications in the event of conviction. As already pointed out above, the Companies Act itself makes a distinction in the matter of fixation of the point of time when the disqualification becomes effective in the case of a Director and a Managing Director. That is because of the fiduciary nature of the relationship, vide *Needle Industries (India) Ltd.* v. *Needle Industries Newey (India) Holding Ltd.* [(1981) 3 SCC 333 : (1981) 3 SCR 698]
>
> **15.** Under the provisions of the Code to which we have already referred there are two stages in a criminal trial before a Sessions Court, the stage up to the recording of a conviction and the stage post-conviction up to the imposition of sentence. A judgment becomes complete after both these stages are covered. Under Section 374(2) of the Code any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court. Section 384 provides for summary dismissal of appeal if the Appellate Court does not find sufficient ground to entertain the appeal. If, however, the appeal is not summarily dismissed, the Court must cause notice to issue as to the time and place at which such appeal will be heard. Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'order' in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be

required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a 'final' order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted. It is, therefore, fallacious to contend that on the admission of the appeal by the Delhi High Court the order of conviction had ceased to exist. If that be so why seek a stay or suspension of the order?

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. In the instant case if we turn to the application by which interim 'stay' of the operation of the impugned judgment was secured we do not find a single word to the effect that if the operation of the conviction is not stayed the consequence as indicated in Section 267 of the Companies Act will fall on the appellant. How could it then be said that the Delhi High Court had applied its mind to this precise question before granting 'stay'? That is why the High Court order granting interim stay does not assign any reason having relevance to the said issue. By not making a specific reference to this aspect of the matter, how could the appellant have persuaded the Delhi High Court to stop the coming into operation of Section 267 of the Companies Act? And how could the Court have applied its mind to this question if its pointed attention was not drawn? As we said earlier the application seeking interim stay is wholly silent on this point. That is why we feel that this is a case in which the appellant indulged in an exercise of hide and seek in obtaining the interim stay without drawing the pointed attention of the Delhi High Court that stay of conviction was essential to avoid the disqualification under Section 267 of the Companies Act. If such a precise request was made to the Court pointing out the consequences likely to fall on the

continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect. There can be no doubt that the object of Section 267 of the Companies Act is wholesome and that is to ensure that the management of the company is not in soiled hands. As we have pointed out earlier the Managing Director of a company holds a fiduciary position qua the company and its shareholders and, therefore, different considerations would flow if an order is sought from the Appellate Court for staying the operation of the disqualification that would result on the application of Section 267 of the Companies Act. Therefore, even on facts since the appellant had not sought any order from the Delhi High Court for stay of the disqualification he was likely to incur under Section 267 of the Companies Act on account of his conviction, it cannot be inferred that the High Court had applied its mind to this specific aspect of the matter and had thereafter granted a stay of the operation of the impugned judgment. It is for that reason that we do not find in the order of the High Court a single reason relevant to the consequence of the conviction under Section 267 of the Companies Act. The interim stay granted by the Delhi High Court must, therefore, be read in that context and cannot extend to stay the operation of Section 267 of the Companies Act.

*** *** ***

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.
>
> **20.** For the above reasons we are of the opinion that since the interim order of stay did not specifically extend to the stay of conviction for the purpose of avoiding the disqualification under Section 267 of the Companies Act, there is no substance in the appeal and the appeal is, therefore, dismissed. The appellant will pay the costs of this appeal which is quantified at Rs 25,000."

It is noted that in the facts of the aforesaid case, the Hon'ble Supreme Court held that the order staying the impugned order of conviction did not specifically extend the stay of conviction for the purposes of Section 267 of the Companies Act, 1956.

23. Learned Senior Counsel appearing on behalf of the appellant has urged that in view of the test of "irreversible consequences" as held in **Afjal Ansari**

(supra), the operation of the impugned judgment of conviction *qua* the present appellant is to be stayed. In this context, the following averments have been made in the present application: -

> "6. The Applicant submits that if a person is convicted of an offence and sentenced to more than 6 months imprisonment, then disqualifications under S.196 Companies Act, 2013 might ensue which will result in irreversible consequences. The individual may be protected from the operation of these disqualifications in the event the Appellate Court suspends the Impugned Order(s).
>
> 7. The Applicant, aged 65 years, is the Promoter and Managing Director of Jayaswal Neco Industries Limited ['JNIL'], a public listed company since 1998. JNIL is amongst top 350 Companies in India by Revenue Count and is engaged in the manufacturing of alloy steel, wire rods, bars, bright bars, along with steel billets, pig iron, sponge iron, pellets and iron & steel castings. It is India's one of the largest Alloy Steel Manufacturers. It serves critical industries such as automotive, power, engineering, defence and railways with a workforce of over 9,500 employees. The Applicant has played a pivotal role in the growth of JNIL securing significant business opportunities & fostering industrial development. He has contributed significantly to its revenue growth in that the Net Revenue of M/s JNIL has grown by 9.26 times from Rs. 640.56 Cr in FY 2003-04 to Rs. 5933.55 Cr in FY 2023-24.
>
> 8. The Applicant's ability to function in the corporate world would impact:
>
> a. Large workforce/employees: JNIL has a total workforce of 9,503 workers including contractual workers. Their livelihoods depend on a successful running/operation of the Company, which has happened under the stewardship of the Applicant. In this regard, it is pertinent to note that:
>
> • The Company has achieved 94% employee retention rate.
>
> • Employees that have benefitted from healthcare initiatives of the Company are more than 4,000.

b. Equity Shareholders: M/s JNIL has significant investment from public equity shareholders including equity holding of 26.44% by ACRE Trusts which is backed by Global Financial Investors.

c. Secured Lenders: JNIL owes around Rs. 3,052 Crores to its secured lenders through NCDs, where the Applicant has given personal guarantees in his own name. The Impugned Orders ought to be stayed since their continued operation create massive uncertainty & hurdles in the Company's repayment obligations which is due in 2025.

9. Any such disqualification will also create issues for the Applicant & M/s JNIL on the following counts:

a) Financial Closure for viable Projects: JNIL will face hurdles in securing desired financial closure for its ongoing & future projects including its scheduled Debt Refinance.

b) Its hard-earned goodwill and reputation will take a huge hit.

c) Its hard-earned & deserved credit ratings for securing loans will get affected.

10. It is submitted that in granting relief(s) as prayed for in the present Application, no prejudice will be caused to CBI or anyone else. On the contrary, irreparable and irreversible damage will be caused to the Applicant."

Relying on **Afjal Ansari (*supra*),** it is submitted that the appellant does have an existing post and qualification to loose if the present application is not allowed and the appellant further qualifies the test of "irreversible consequences" as noted hereinabove.

24. On the other hand, learned Senior Counsel appearing on behalf of the respondent/CBI has drawn attention of this Court towards the minority judgment of Hon'ble Supreme Court passed by Hon'ble Mr. Justice Dipankar

Datta in **Afjal Ansari (*supra*),** to submit that the power under Section 389 of the CrPC to stay the order of conviction has to be exercised in exceptional circumstances. Reliance was placed on paragraph 56 thereof which reads as: -

> "**56.** 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 was also submitted that the appellant has been convicted in coal block cases which requires further consideration of this Court while deciding the present application. Reliance was placed on **Girish Kumar Suneja (*supra*)** to show that the Coal Block Allocation cases form one identifiable category of cases that are distinct from other cases since they have had a massive impact on public interest. It is further contended that the present appellant alongwith the company M/s JNIL is also facing prosecution under coal allocation matters where he is being charged individually as an accused. It was pointed out that he is facing prosecution in his capacity as a key functionary of M/s JNIL in the said case and therefore, the conviction of the appellant in the present case cannot be seen in isolation and the fact of appellant facing trial in other coal block cases in his capacity as key personnel of M/s JNIL cannot be ignored by this Court at this stage in view of the larger public interest and public impact of the coal block cases on the society. Attention of this Court has been drawn on the judgment of Coordinate Bench

of this Court in **Madhu Koda**[16] **(*supra*)**, to submit that the application seeking similar reliefs of the appellant therein was dismissed by the said Court by observing as under: -

> "59. This Court is of the view that the appellant has a ***prima facie*** case. However, this Court is not persuaded to accept that his conviction is liable to be stayed on this ground alone. The appellant has been convicted of an offence after trial. One of the consequences of the conviction is that the appellant is not qualified to run for public office. While it is contended that this would lead to injustice and irreversible consequences, the Court must also consider wider ramifications of the same.
>
> 60. In recent times, there has been an increasing demand that steps be taken for decriminalization of politics. A large number of persons with criminal antecedents or who are charged with heinous crimes stand for and are elected to Legislative Assemblies and the Parliament. This has been a matter of some concern. In Public Interest Foundation v. Union of India, (2019) 3 SCC 224, the Supreme Court had observed as under:
>
> > "2. The constitutional functionaries, who have taken the pledge to uphold the constitutional principles, are charged with the responsibility to ensure that the existing political framework does not get tainted with the evil of corruption. However, despite this heavy mandate prescribed by our Constitution, our Indian democracy, which is the world's largest democracy, has seen a steady increase in the level of criminalization that has been creeping into the Indian polity. This unsettlingly increasing trend of criminalization of politics, to which our country has been a witness, tends to disrupt the constitutional ethos and strikes at the very root of our democratic form of government by making our citizenry suffer at the hands of those who are nothing but a liability to our country."
>
> 61. The Court considered the plea of the petitioner in that case to disqualify persons who were charged with heinous offences to contest

[16] *Ibid; supra note 8*

elections to public offices. The Law Commission, in its 244th Report, had also recommended that a person against whom the charges have been framed be disqualified from standing for elections.

62. The Supreme Court in Public Interest Foundation v. Union of India (supra), had extensively referred to the recommendations of the Law Commission and, after noting various decisions, had observed as under:

> "118. We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. A time has come that the 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 the 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 agonized 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."

63. Clearly, if the wider opinion is that persons charged with crimes ought to be disqualified from contesting elections to public offices, it would not be apposite for this Court to stay the appellant's conviction to overcome the disqualification incurred by him."

26. In all the judgments referred to on behalf of the appellant/applicant including **Afjal Ansari (*supra*),** the merits of the case *qua* an order of convictions have been examined. In **Afjal Ansari (*supra*)**, the Hon'ble

Supreme Court of India has categorically recorded that factual matrix in the said case warranted an order of stay on the judgment of conviction of the appellant therein as highlighted hereinbefore. Similarly, in **Navjot Singh Sidhu (*supra*)**, the Hon'ble Supreme Court while staying the order of conviction of the said appellant had observed as under: -

> **"17.** We have pointed out above the broad features of the case. The incident happened all of a sudden without any premeditation. The deceased was wholly unknown to the appellant. There was no motive for commission of the crime. The accused are alleged to have lost temper and started giving abuses on account of objection raised by the occupants of the Maruti car due to obstruction being caused by the vehicle of the appellant. Blows by fist are alleged to have been given and no weapon of any kind had been used. The medical evidence shows that the deceased had a diseased heart. The doctor who performed the post-mortem examination was unable to give the cause of death. The Medical Board gave its opinion after nearly a fortnight and that too does not ascribe the death due to any external injury but says "effects of head injury and cardiac condition". The medical evidence does not conclusively establish that the death occurred due to blow given on the head. If in the FIR, which is the earliest version, and, also in his statement in the court which was recorded after more than 4 years on 20-1-1993, Jaswinder Singh did not assign any role of causing injury on the head of the deceased to the appellant, whether his subsequent statement given after several years, wherein he assigned the specific role to the appellant of hitting the deceased on the head by a fist and thereby making him responsible for causing the death of the deceased should be believed, will certainly require consideration at the time of hearing the appeal. If the statement which Jaswinder Singh gave after several years wherein he attributed the head injury to the appellant is not accepted for the reason that it is at variance with the version in the FIR and his earlier statement, the appellant cannot be held guilty under Section 304 Part II IPC. **These features of the case which touch upon the culpability of the appellant, prima facie appear to be in his favour. Another feature which has a bearing is that the findings on factual aspects of the case**

recorded in favour of the appellant by the learned Sessions Judge resulting in acquittal have been reversed in appeal by the High Court.

18. The incident took place on 27-12-1988. It has no correlation with the public life of the appellant which he entered much later in 2004 when he was elected as a Member of Parliament. It is not a case where he took advantage of his position as MP in commission of the crime. As already stated, it was not necessary for the appellant to have resigned from the membership of Parliament as he could in law continue as MP by merely filing an appeal within a period of 3 months and had he adopted such a course he could have easily avoided incurring any disqualification at least till the decision of the appeal. However, he has chosen to adopt a moral path and has set high standards in public life by resigning from his seat and in seeking to get a fresh mandate from the people. In the event prayer made by the appellant is not granted he would suffer irreparable injury as he would not be able to contest for the seat which he held and has fallen vacant only on account of his voluntary resignation which he did on purely moral grounds. Having regard to the entire facts and circumstances mentioned above we are of the opinion that it is a fit case where the order of conviction passed by the High Court deserves to be suspended."

(emphasis supplied)

27. Turning to the facts of the present case, it is noted that the present appellant has been convicted for being part of a conspiracy to secure recommendations of 24th Screening Committee meeting dated 09.12.2004 for allocation of coal block in favour of M/s AIPL (A-3). It was argued on behalf of the appellant that PW-14, A.K. Srivastava, in his testimony before the learned Trial Court had stated that the questions posed by the said Screening Committee were being answered by Manoj Kumar Jayswal (Convict no. 1) and not the present applicant/appellant. It was also argued that the key prosecution witness, *i.e.,* PW-20, regarding forgery of documents has also

deposed that all the forgery were committed at the behest/asking of aforesaid Manoj Kumar Jayaswal (convict no. 1).

28. During the course of trial, it has come on record that PW-14, AK Srivastava, had stated that in the 24th Screening Committee meeting DY Moghe, Manoj Kumar Jayaswal (A-1), VS Garg, Ramesh Kumar Jayaswal (A-2; present appellant) were present. It was noted that the present appellant had relied on the minutes of the meeting and had taken various defenses. Learned Trial Court had, after considering the submissions made on behalf of Manoj Kumar Jayaswal (A-1), opined that AK Srivastava, PW-14, had made improvements in his statement and had shifted the burden on Manoj (A-1) by alleging that he had answered the queries on behalf of AIPL, A-3. Thus, statement of PW-14 that Manoj Kumar Jayaswal (A-1) had answered queries during the 24th Screening Committee meeting was rejected by the learned Trial Court. Learned Trial Court had further noted that the present appellant had not named anyone who gave responses during the said Screening Committee meeting on behalf of M/s AIPL and no effort was made on his behalf to elicit favourable responses from the relevant witnesses regarding the fact that who had answered the queries on behalf of AIPL before the Screening Committee.

29. It was further noted that the present appellant was the promoter Director of M/s AIPL, A-3, since its incorporation in 1984 and from

30.10.2003, he was the authorized signatory of the said accused company. It has come on record that when the present appellant was yet to be appointed as authorized signatory of A-3, he addressed letter dated 15.07.2003 to Ministry of Coal with a copy of the same to Ministry of Steel and other. *Vide* this letter, a revised application which was necessitated due to change in captive Coal blocks and suitability of the location of the sponge iron plant in Jharkhand was submitted. In this letter, the present appellant had provided the details of the accused company, A-3, for allocation of Coal Blocks to meet the requirement of Annual Capacity of Sponge Iron. It has also come on record that the present appellant had also written another exhaustive letter on 30.08.2003 (Exhibit P-14) to the Chairman, Screening Committee in connection with allocation of Coal blocks to the accused company. The said letter was in respect of the discussion in 21st Meeting of the Screening Committee held on 19.08.2003 on the subject of allotment of requested blocks for AIPL and was signed by the present appellant in his capacity as Authorized Signatory of the accused company, A-3.

30. On examination of the aforesaid two letters, it was concluded that the appellant had deep knowledge about the affairs of AIPL and he had signed both the aforesaid letters as authorized signatory of AIPL whereas he had become authorized signatory of AIPL thereafter. The present appellant had, in his written statement under Section 313(5) of the CrPC, stated that he was briefed about the information submitted with Ministry of Steel (MoS) however, he has not stated anything in respect of the submissions attributed to

him in the minutes of the Screening Committee. Defences of the appellant were also dealt by the learned Trial Court on merits and it was concluded that AIPL was under the flagship of Manoj Kumar Jayaswal (A-1) at the time of 24th Screening Committee meeting, however, the assets were not separated by that time and the present appellant had deep knowledge about the affairs of M/s AIPL as the same was evident from the revised application given by him for allocation of Coal block and the other application mentioning detailed background of the discussions held in 21st Screening Committee meeting. The appellant was also aware about the progress of AIPL and its subsequent developments. Learned Trial Court, based on evidences, concluded that as per PW-14, the present appellant misrepresented before 24th Screening Committee meeting that he was Director of AIPL and Manoj Kumar Jayaswal (A-1) had appeared as Joint Managing Director of Jayaswal Neco Ltd.

31. In view of the aforesaid, it cannot be stated, at this stage, that the judgment of conviction is *prima facie* unsustainable. The grounds taken in the present appeal would be evaluated on its own merits during the final hearing.

32. It has been argued that the appellant would face "irreversible consequences" if the judgment of conviction is not stayed. In support of the aforesaid submission, certain facts relating to the company, M/s JNIL, have been placed on record, as noted hereinbefore. Reliance was placed upon by the learned Senior Counsel appearing on behalf of the appellant on the

judgment of Hon'ble Supreme Court in **Rama Narang (*supra*)** to submit that disqualification incurred by Section 267 of the Companies Act, 1956, (similar to Section 196(3)(d) of the Companies Act, 2013) if given effect to cannot be undone at a subsequent date, if the conviction is set aside at later stage. However, it was further observed by the Hon'ble Supreme Court in the said case that while granting stay of the order of conviction, the Court must examine pros and cons of a case. The relevant observation made by Hon'ble Supreme Court reads as under: -

> "**19.** …….. **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)

33. In the said judgment, the Hon'ble Supreme Court while analyzing the disqualification under provisions of Section 267 of the Companies Act, 1956, had observed and held as under: -

> "**10.** The above resume would show that the principal question which falls for our determination is whether the appellant is liable to be visited with the consequence of Section 267 of the Companies Act notwithstanding the interim order passed by the Delhi High Court while admitting the appellant's appeal against his conviction and sentence by the Additional Sessions Judge, Delhi. As we have said earlier the factum of his conviction and the imposition of sentence is not in dispute.

Section 267 of the Companies Act, to the extent it is relevant for our purposes, may be set out:

> "267. No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of any person as its managing or whole-time Director who—
>
> (*a*) * * *
>
> (*b*) * * *
>
> (*c*) is, or has at any time been convicted by a court of an offence involving moral turpitude."

On a plain reading of this section it seems clear to us from the language in which the provision is couched that it is intended to be mandatory in character. The use of the word 'shall' brings out its imperative character. The language is plain, simple and unambiguous and does not admit of more than one meaning, namely, that after the commencement of the Companies Act, no person who has suffered a conviction by a court of an offence involving moral turpitude shall be appointed or employed or continued in appointment or employment by any company as its managing or whole-time Director. Indisputably, the appellant was appointed a Director in 1988 and Managing Director in 1990 after his conviction on 22-12-1986. On the plain language of Section 267 of the Companies Act, the Company had, in making the appointments, committed an infraction of the mandatory prohibition contained in the said provision. The section not only prohibits appointment or employment after conviction but also expects discontinuance of appointment or employment already made prior to his conviction. This in our view is plainly the mandate of Section 267. As rightly pointed out by the Division Bench of the High Court, Section 274 of the Companies Act provides that a disqualification which a Director incurs on conviction for an offence involving moral turpitude in respect of which imprisonment of not less than six months is imposed, the Central Government may, by notification, remove the disqualification incurred by any person either generally or in relation to any company or companies specified in the notification to be published in the Official Gazette. Such a power is, however, not available in the case of a Managing Director. Secondly, Section 283 of the Companies Act provides that the office of a Director shall become vacant if convicted and sentenced as stated hereinabove but sub-section (2) thereof, inter

alia, provides that the disqualification shall not take effect for thirty days from the date of sentence and if an appeal is preferred during the pendency of appeal till seven days after the disposal of the appeal. This benefit is not extended in the case of a Managing Director. **The Companies Act has, therefore, drawn a distinction between a Director and a Managing Director; the provisions in the case of the latter are more stringent as compared to that of the former. And so it should be because it is the Managing Director who is personally responsible for the business of the Company. The law considers it unwise to appoint or continue the appointment of a person guilty of an offence involving moral turpitude to be entrusted or continued to be entrusted with the affairs of any company as that would not be in the interests of the shareholders or for that matter even in public interest. As a matter of public policy the law bars the entry of such a person as Managing Director of a company and insists that if he is already in position he should forthwith be removed from that position. The purpose of Section 267 is to protect the interest of the shareholders and to ensure that the management of the affairs of the company and its control is not in the hands of a person who has been found by a competent court to be guilty of an offence involving moral turpitude and has been sentenced to suffer imprisonment for the said crime. In the case of a Director, who is generally not in-charge of the day-to-day management of the company affairs, the law is not as strict as in the case of a Managing Director who runs the affairs of the company and remains in overall charge of the business carried on by the company. Such a person must be above board and beyond suspicion."**

(emphasis supplied)

34. As observed by the Hon'ble Supreme Court, the statutory provision of disqualification in the Comapanies Act, 1956, were applicable to a Managing Director because he is supposed to be the person responsible for conducting the business of the company; however, under the provisions of Section 196(3)(d) of the Companies Act, 2013, the disqualification is applicable not just to the Managing Director but also to whole time Director or the Manager.

The disqualification which would come into effect on account of the aforesaid conviction has been provided under Section 196(3)(d) of the Companies Act, 2013, which reads as under: -

> "**196. Appointment of managing director, whole-time director or manager**.—
>
> **** **** ****
>
> **(3) No company shall appoint or continue the employment of any person as managing director, wholetime director or manager who —**
>
> (a) is below the age of twenty-one years or has attained the age of seventy years:
>
> Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;
>
> [1][Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.]";
>
> (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
>
> (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
>
> **(d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.**
>
> **** **** ****"

(emphasis supplied)

As rightly pointed out by the learned Senior Counsel appearing on behalf of the respondent/CBI, disqualification in Companies Act, 1956, would come into effect if the person concerned has at any time been convicted of an offence involving moral turpitude. However, the same has now been amended to the extent that, it will come into effect if the person has been convicted of an offence and sentenced for a period of more than six months irrespective of the nature of the offence.

35. In the present case, it has come on record that the present appellant along with company, M/s JNIL, are also facing prosecution in the coal block matter. It has come on record that the present appellant is facing prosecution in his capacity as key personnel of the said company, M/s JNIL. The Hon'ble Supreme Court in **Afzal Ansari (*supra*)** had observed and held as under: -

> **"15.** …….. **The very notion of irreversible consequences is centred on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case."**
>
> **(emphasis supplied)**

Keeping in view the aforesaid circumstances and the wider social impact, the case of the appellant cannot fall in the category of "exceptional circumstance" in order to give benefit of stay of conviction. Following observation of the Hon'ble Supreme Court in **Girish Kumar Suneja (*supra*),** ought to be considered with respect to impact of the Coal Block scam: -

"**43.** In our opinion, it is not as if one single case has been taken up for allegedly discriminatory treatment out of an entire gamut of cases. All the cases relating to the allocation of coal blocks have been compartmentalised and are required to be treated and dealt with in the same manner. **The Coal Block Allocation cases form one identifiable category of cases that are distinct from other cases since they have had a massive impact on public interest and there have been large-scale illegalities associated with the allocation of coal blocks. It is therefore necessary to treat these cases differentially since they form a unique identifiable category.** The treatment of these cases is certainly not arbitrary—on the contrary, the classification is in public interest and for the public good with a view to bring persons who have allegedly committed corrupt activities, within the rule of law. It is hence not possible to accept the submission that by treating the entire batch of Coal Block Allocation cases in a particular manner different from the usual cases that flood the courts, there is a violation of Article 14 of the Constitution.

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45. Insofar as the present appeals are concerned, the cases fall in a class apart, arising as they do out of the illegal and unlawful allocation of coal blocks. It is only in respect of these cases that this Court monitored the investigations and it is only in respect of these cases that the order was passed by this Court on 25-7-2014 [*Manohar Lal Sharma* v. *Union of India*, (2015) 13 SCC 35 : (2015) 13 SCC 37 : (2016) 1 SCC (Cri) 418 : (2016) 1 SCC (Cri) 419] . **The cases are concerned with large-scale corruption that polluted the allocation of coal blocks and they form a clear and distinct class that need to be treated in a manner different from the cases that our justice-delivery system usually deals with.** The classification being identifiable and clear, we do not see any violation of Article 14 of the Constitution.

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49. It must not be forgotten that the cases arising out of the Coal Block Allocations are not ordinary cases but fall under a special or distinct category which requires special attention given the magnitude of the illegalities allegedly committed including some with criminal intent. It is in this view of the matter that this Court had no option but to hand over

> the investigations to CBI and to monitor the investigations so that they reach their logical conclusion, without any interference from any quarter. The magnitude of the illegalities is such that it appears that even the integrity of the Director of CBI was prima facie compromised, and this Court had to intervene and direct investigations into the conduct of the Director of CBI. That being so, it can hardly be said with any degree of seriousness that the procedure adopted by this Court, in the facts and circumstances of the case, violate any right to the life and liberty of any of the appellants or any other persons allegedly involved in the criminality associated with the allocation of coal blocks."
>
> (emphasis supplied)

36. Thus, the fact that the present appellant is also facing trial in another coal block case in his capacity as key personnel of M/s. JNIL cannot be ignored at this stage.

37. In view of the aforesaid facts and circumstances of the present case, the present application so far as it seeks suspension of impugned judgment of conviction dated 09.12.2024 is dismissed.

38. Regarding the suspension of order on sentence dated 11.12.2024, learned Senior Counsel has submitted that the co-convict of the appellant, Manoj Kumar Jayaswal (A-1), has also filed appeal, CRL.A. 1186/2024, assailing the impugned judgment of conviction. In the said appeal, the sentence of Manoj Kumar Jayaswal (A-1), has been suspended by a Coordinate Bench of this Court *vide* order dated 23.12.2024 passed in **CRL.M.(BAIL) 2138/2024 in CRL.A. 1186/2024**. The present appellant has

a family comprising of his wife, 2 sons, one daughter and his father. The appellant is 65 years of age. The appellant was granted permission to travel abroad by this Court on several occasions during the pendency of the captioned appeal as well as by the learned Trial Court during the course of trial and he has not misused the liberty granted to him.

39. In the totality of the facts and circumstances of the present case, the present application is partly allowed. The sentence of the appellant is suspended and he is directed to be released on bail on his furnishing personal bond in the sum of Rs.1,00,000/- along with one surety of the like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions: -

i. The memo of parties shows that the applicant is residing at Usha Sadan, Pandit Ravishankar Shukla Marg, Civil Lines, Nagpur, Maharashtra, 440001. In case of any change of address, the applicant is directed to inform the same to this Court by way of an affidavit.

ii. The applicant shall not leave India without the prior permission of this Court.

iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

40. The present application is partly allowed and disposed of accordingly.

41. Interim order dated 08.01.2025 is made absolute in the aforesaid terms.

42. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the present appeal or the case of co-convicts and any observations made herein are only for the purposes of the present application.

43. Copy of the judgment be sent to the learned Trial Court as well as concerned Jail Superintendent for necessary information and compliance.

44. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

AUGUST 01, 2025*/sn/kr/ns*