2026:BHC-AUG:12515

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 921 OF 2026
IN APEAL/344/2023

DEELIP GOPALSINGH THAKUR
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant: Mr. S. S. Gangakhedkar
APP for Respondent: Ms. U. S. Bhosale

CORAM : RAJNISH R. VYAS, J.
DATE : 13th MARCH, 2026

ORAL JUDGMENT :

1. Heard Mr. Gangakhedkar, learned counsel for the applicant and Ms. Bhosale, learned APP for the State.

2. This is the second application preferred by the applicant for a stay of his conviction.

3. First application was rejected by this Court vide order dated 24.02.2026, in which the reasons were given at length.

4. Learned counsel for the applicant has now contended that while rejecting the earlier application, the court has taken into consideration the fact that there were no sufficient pleadings made and by way of the present application, the applicant has provided the details

and presented a specific case. He therefore contends that, based on the material available on record, a second view can now be taken.

5. It is the case that the applicant cannot be appointed as co-opted member of the Nanded-Waghala Municipal Corporation, as the provisions of Section 10 of the Maharashtra Municipal Corporations Act create a hurdle to his induction as a co-opted member. Section 10 of the said Act is reproduced below. More particularly, the relevant provision is Sub-Section (1), Clause (a):

> *"10. Disqualification for being a* councillor*:*
> *(1) Subject to the provisions of sections 13, 9 and 404, a person shall be disqualified for being elected and for being a* councillor*, if such person -*
> *....*
> *(a) has been convicted by a Court of India of any offence involving moral turpitude, unless a period of six years has elapsed since the date of such conviction."*

6. Perusal of the aforesaid clause reveals that a person shall be disqualified from contesting the election and from being a councillor if such person is convicted of any offence involving moral turpitude, unless a period of six years has lapsed from the date of conviction or, upon the expiry of such sentence, the disqualification incurred under this clause ceases. Further provision, which is not reproduced above, clarifies that the expiry of such a sentence shall not entitle a person to continue as a

councillor or to stand for election at any by-election held during the remainder of the current term of the councillor.

7. Learned counsel for the applicant then invited my attention to Section 2 of Sub-Section 11 of the Maharashtra Municipal Corporations Act, more particularly, definition of councillor which means a person duly elected as a member of the Corporation and includes a nominated councillor who shall not have the right, (i) to vote at any meeting of the Corporation and Committees of the Corporation; and (ii) to get elected as a Mayor of the Corporation or a Chairperson of any of the Committees of the Corporation.

8. Learned counsel for the applicant has also relied upon the Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated Councillors) Rules, 2012, more particularly Rule 4, which deals with the qualifications for nomination, and laid special emphasis on clause (g) of the said rule, which is reproduced as:

> *"4. Qualification for nomination*
> *A person shall be eligible for being nominated as a candidate for the office of the nominated* councillors *if he has special knowledge or experience in municipal administration and he, -*
> *.....*
> *(g) has experience of not less than five years as an office bearer of a Non-Government* Organisation *registered under the Bombay Public Trusts Act, 1950, engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council."*

9. He, in the aforesaid background, has contended that if his conviction awarded by the Additional Sessions Judge-1, Nanded, dated 11.04.2023, in Session Case No. 358/2019, is not stayed, he would suffer the irreparable loss and the consequences would be irreversible.

10. He has also relied upon various judgments, which would be discussed in the latter part of the judgment.

11. Per Contra Ms. Bhosle, learned APP contended that this court vide its order dated 24.02.2026, has already rejected the application by speaking order and, therefore, now moving the second application would not be permissible in the eyes of law. She contended that in the order dated 24.02.2026, material was discussed, including the fact of lack of pleadings, and, thereafter, the order was passed. According to her, since this order was not taken exception to by the applicant before the higher court, it becomes final and, consequently, the second application would not be maintainable.

12. So far as the provisions of the Maharashtra Municipal Corporations Act and the Rules stated above are concerned, she submitted that the provisions are very clear and since the conviction is awarded, interference at the hands of this court may not be required.

She has also relied upon various judgments, which would also be dealt with in the latter part of the judgment.

13. With the help of both the counsels, I have gone through the impugned judgment, case law, and have pondered over the arguments advanced by them.

14. The applicant/ original accused no. 3 in Sessions Case No. 358 of 2019, along with other accused was convicted for commission of offences punishable under Sections 143, 147, 148, 149, 332, 336, 341, 353 and 427 of the Indian Penal Code (hereinafter would be referred to as 'the IPC' for sake of brevity), so also under Section 3 of the Prevention of Damage to the Public Property Act of 1984. The Sessions Court tried all nineteen accused, who were convicted for the aforesaid offences as under :

Section	Sentence	Fine (Rs.)	In Default
148 r/w 149 IPC	R.I. for 3 years	10,000/-	R.I. for 6 months
353 r/w 149 IPC	R.I. for 2 years	50,000/-	R.I. for 6 months
332 r/w 149 IPC	R.I. for 3 years	50,000/-	R.I. for 6 months
336 r/w 149 IPC	R.I. for 3 months	250/-	R.I. for 3 days
341 r/w 149 IPC	S.I. for 1 month	500/-	S.I. for 6 days
3 of Act of 1984	R.I. for 5 years	50,000/-	R.I. for 1 year

15. It is not in dispute that the sentence imposed upon the applicant is suspended. The question that falls for consideration of this court is whether the second application for a stay of conviction is

maintainable and whether the stay of conviction can be granted to the applicant.

16. Coming to the first question, suffice it to say that this court, while deciding an earlier application on 24.02.2026, has dealt with the various contentions advanced by the parties and has rejected the application. One of the principal grounds was the lack of pleadings in the earlier application. Since in this application, more material is produced and the pleadings are made, in order to do complete justice, I think that the matter needs to be looked into its merits.

17. It is a well-settled position in law that contesting an election is not a constitutional right but a statutory one. The Maharashtra Municipal Corporations Act, under Section 10, specifically addresses disqualification for being a councillor. Clause (a) is clear and says that if a person is convicted by a court of any offence involving moral turpitude, he shall be disqualified.

18. Thus, the said clause is not a sentence-based clause but can be called as a subject /conviction-based clause. It is thus necessary to see whether the act committed by the applicant can be called as an act of moral turpitude. It is further necessary to mention here that a deeper analysis of the judgment of conviction would not be permissible at this

stage. Still, it will have to be seen whether the applicant has made out an exceptional case.

19. In this regard, it is necessary to reproduce the findings of the Sessions Court, by which the accused therein, including the present applicant, were convicted. Paragraph no. 68 of the impugned judgment deals with various pieces of evidence which intend conviction of the accused, and the same are reproduced :

> *"68] From the evidence of the prosecution witnesses, as has been discussed in detail in the preceding paragraphs of the Judgment, the prosecution can be said to have proved the following facts:*
>
> *(a) That, the incident in question had occurred on 7.6.2009 at about 9.30 to 10.00 a.m.;*
>
> *(b) That the incident in question had occurred at Hingoli Gate area on the road passing from Railway Station towards Hingoli, Narsi, etc. and was in front of the office of Khurana Travels at Hingoli Gate on the road.*
>
> *(c) That, S.T. buses bearing registration Numbers AP 28 Z 2316 of Kamareddy Depot of APSRTC, MH 20 D 8827 of Latur Depot of MSRTC (driven by Hawagirao Tiprale PW2), MH 20 D 5917 of Hadgaon S.T. bus Depot (driven by Santosh Toradmal PW5), MH 20 D 6812 of Nanded S.T. bus Depot (driven by Prakash Yallawad, PW4), MH 20 D 7348 of Gangakhed S.T. bus Depot (driven by Sayyad Sajid Ali, PW6), MH 40 9623 of Umarkhed S.T. bus Depot, MH 20 D 5173 of Hadgaon S.T. bus Depot and MH 40 8125 of Aheri S.T. bus Depot of MSRTC, besides jeep bearing registration No. MH 26 B 445 of Municipal Corporation Nanded Waghala and Police Departmental jeep of Itwara Police Station, Nanded bearing registration No. MH 26 L 273 (driven by Galib Khan Jilani Khan, PW3) were*

obstructed from proceeding towards their destinations and was *damaged by* the *pelting of stones*, *inflicting blows of iron rods*, *etc.*, *on the glass windshields, windowpanes*, *etc.*, *at the spot of* the *incident during the riot on 7.6.2008 at about 9.30 a.m. to 10.00 a.m.*
(d) That, the S.T. Bus Drivers of some of the above mentioned vehicles, when examined as prosecution witnesses, they narrated the facts about the occurrence of the incident in question, damage caused to the vehicles in their possession and the manner of pelting of stones on their vehicles by forming an unlawful assembly armed with stones, wooden poles, sticks, *etc.;*

(e) That the presence of accused Nos. *1 to 3*, *along with the accused* Nos. *4 to 19*, *during the riot at the Hingoli Gate area on 7.6.2008*, *while raising slogans were raised in the words "*जयभवानीजयशिवराय*" and pelting stones on the buses of MSRTC and APSRTC, Police vehicles and the vehicle of Itwara Police Station*, *etc. and Municipal Corporation, Nanded, has been confirmed by Hawagirao Tiprale, PW2 and recitals in his Information Report at Exh. 48, Santosh Toradmal PW5, Sayyad Sajid Ali, PW6, Galib Khan Jilani Khan PW3, by his statement proved at Exh. 93 and 94 by Shirpatrao Niwale PW7, Mohd. Salim PW9 and Manisha Pawar PW10. Further, the facts about the apprehension of accused persons from the spot of* the *incident in question and taking them to the Vazirabad Police Station in a Police van and* the *effect oftheir arrest at* the *Vazirabad Police Station, Nanded* are *confirmed from the arrest panchanamas at Exh. 95 to 108 drawn by Shripatrao Niwale, PW7. The said arrest panchanamas have been admitted by the defence*, *besides the record* finding *place for the arrest panchanamas and surety bonds of accused* Nos. *1 to 3 and others*, *which recite that they were arrested in connection with Crime No. 146/2008 by Vazirabad Police Station on 7.6.2008 by PW7 Shripatrao Niwale when taken at the Vazirabad Police Station. Then*, *the accused persons are aware of their arrest in connection with the said crime, their attempt to raise* a *defence of plea of alibi and* refusing to examine *the witnesses on this point can be considered in support of the* prosecution's *case*

regarding their presence at the spot of the *incident in question;*

(f) That the police from Vazirabad Police Station had reached at the spot when rioting by pelting of stones and damaging the S.T. buses and other vehicles by the accused persons was in progress, and that thereafter the incident persisted for about 15 to 20 minutes till the accused persons were apprehended from the spot and taken to Vazirabad Police Station in a police van. The defence also speaks in suggestions to the prosecution witnesses that the accused persons were present at the Vazirabad Police Station when the police had taken the S.T. buses and other vehicles to the Police Station, besides the other police personnel and the accused persons from the spot.

(g) That, due to the *pelting of stones during the incident inquestion, Mohammad Salim PW9 serving as PSI at Vazirabad Police Station on 7.6.2008 and Manisha Pawar PW10 serving as Lady Police Constable at the Police Headquarters Nanded and posted for Law and Order Bandobast duty at Vazirabad Police Station on 7.6.2008, were injured as* they *were hit by the stones pelted by the accused persons.* They *were referred to Shri Guru Govind Singhji Memorial District Civil Hospital and Medical College, Nanded, where they were medically examined and treated by* Dr *Shubhangi Karadkhedkar, PW11. The recitals of the injury certificates bear the mention of being referred by Vazirabad Police Station on 7.6.2008. The nature of injuries found on the persons of injured witnesses could* have been *caused during the pelting of stones, as per the opinion of* a *medical expert.*

(h) That, the informant Hawgirao Tiprale PW2, was serving as Bus Driver at Latur Depot of MSRTC, Galib Khan PW3, was serving as a Police Head Constable at Itwara Police Station, Prakash Yallawad PW4 was serving as S.T. Bus Driver at Nanded S.T. Depot of MSRTC, that likewise Santosh ToradmalPW5, was serving as S.T. Bus Driver at Hadgaon S.T. Bus Depot and Sayyad Sajid PW6, was serving as S.T. Bus Driver of Gangakhed Depot of MSRTC, Mohammad SalimPW9 was serving as Sub Inspector of

Police at Vazirabad Police Station and Manisha Pawar PW10 was serving as a Lady Police Constable at Police Headquarters, Nanded on 7.6.2008. All the said witnesses besides several others who the prosecution has not examined*, are public servants as per the definition of "Public Servant" contemplated under section 21 of the Indian Penal Code as either they were directly in the employment of the State Government or in the Maharashtra State Road Transport Corporation established and run under control of the State Government as contemplated under Clause 12 of section 21 of the Indian Penal Code;*

(i) That the properties like the S.T. buses and jeep vehicles *of Itwara Police Station and Municipal Corporation of Nanded, being either the properties of the State Government or the Corporations established under the statutes by the State Government, fall within the definition of "Public Property" as defined under section*

2 (b) of the Prevention of Damage to Public Property Act, 1984;

(j) That the informant and other material prosecution witnesses were discharging their public duties as public servants at the time of the occurrence of the incident in question, either as S.T. Bus Drivers or Police personnel deployed for Law and Order Bandobast;

(k) That, by staging agitation of road blockage by forming an unlawful assembly armed with stones, sticks, wooden poles and iron rods, etc. and by pelting stones on the S.T. buses and police vehicles, etc., had caused obstruction in the discharge of public duties of the informant and other prosecution witnesses at the hands of the accused persons;

(l) That, damage to the vehicles referred to *in the spot panchanama Exh. 44 is to the tune of Rs. 2,35,000/- approximately, which certainly exceeds the damage of Rs. 50/- as contemplated under section 427 of the Indian Penal Code;*

> *(m) That the restraint,* which *had occurred to free passage of the S.T. buses, police vehicles and the vehicle of the Municipal Corporation, etc., from the spot of* the *incident in question, falls under the definition of wrongful restraint as contemplated under section 341 of* the *Indian Penal Code;*
>
> *(n) That the causing of injuries to Mohammad Salim PW9 and Manisha Pawar PW10 during the discharge of their public duties of pacifying and containing the riots at the time of* the *incident in question,* attracts *the ingredients of the provisions of section 332 of the Indian Penal Code;*
>
> *(o) That the obstruction in the lawful discharge of duties by the informant and other prosecution witnesses, at the hands of the accused persons due to riots with pelting of stones and injuring the police personnel as well as damaging vehicles possessed by them on behalf of State Transport Corporations, Municipal Corporation Nanded and the Police Department attracts the ingredients of the offence punishable under section 353 of the Indian Penal code, so also the provisions of section 3 of the Prevention of Damage to the Public Property Act, 1984 are attracted to the facts of the case in hand;"*

20. In this background, it will have to be seen whether the act of the applicant can be called as an act of "moral turpitude" or not. Mr. Gangakhedkar, the learned counsel for the applicant, with all fairness, has brought to my attention the judgment of the Hon'ble Apex Court in the case of **State Bank of India and others Versus P. Soupramaniane, AIR Online 2019 SC 202,** more particularly, paragraph nos. 7 and 8, which reads as under :

> *"7. Moral Turpitude' as defined in Black's Law Dictionary (6th ed.), is as follows:*

"The Act of baseness, vileness, or the depravity in the private and social duties which man owes to his fellow *man, or to society in general, contrary to accepted and customary rule of right and duty between man and man."*
"implies something immoral in itself regardless of it being punishable by law"; "restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind."
According to Bouvier's Law Dictionary, 'Moral Turpitude' is :
"An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man."
Burton Legal Thesaurus defines 'Moral Turpitude' as :
"Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonour*, shame, guilt, knavery, misdoing, perversion, shame, ice, wrong."*

8. There is no doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude. Though every offence is a crime against society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude. Acts which disclose the *depravity and wickedness of character can be* categorised *as offences involving moral turpitude. Whether an offence involves moral turpitude depends* on *the facts and circumstances of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:*

a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;

b) Whether the motive which led to the act was a base one, and

c) Whether on account of the act having been committed, the perpetrators could be considered to be of a depraved

> *character or a person who was to be looked down upon by society.*
>
> *The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are:- the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. According to the National Incident – Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories, which are: crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault, where the victims are always individuals. The object of crimes against property, for example, robbery and burglary, is to obtain money, property, or other benefits. Crimes against society, for example, gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, willfulness or recklessness."*

21. He then contended that the act of the applicant cannot be called as an act of moral turpitude. He also placed reliance on the judgment of **Shyam Narain Pandey Versus State of Uttar Pradesh, reported in (2014) 8 SCC 909**, more particularly, paragraph no. 6, which read as under :

> *"6. It may be noted that, even for the suspension of sentence, the court must record the reasons in writing under Section 389(1) CrPC. A couple of provisos were added under Section 389(1) CrPC pursuant to the*

> *recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict whose sentence is death, life imprisonment, or a period of not less than ten years. If the appellate court is inclined to consider the release of a convict of such offences, the Public Prosecutor has to be given an opportunity to show cause in writing against such release. This is also an indication of the seriousness of such offences and the circumspection that the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction is also stayed, it would have a serious impact on the public perception of the integrity of the institution. Such orders will definitely shake the public confidence in the judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction, especially in the types of cases referred to above, and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice."*

22. He thus contended that the conviction be stayed, else the applicant would not be in a position to get nominated as co opt councillor. He also took me to the law laid down by the Hon'ble Apex Court in case of **Afjal Ansari Versus State of Uttar Pradesh, reported in (2024) 2 SCC 187,** and has contended that in that case, three questions were framed by the Hon'ble Apex Court, including a question as to whether as to conviction of offence involving "moral turpitude" can be a valid ground to deny suspension of conviction under Section 389 (1) of Cr.p.c. Paragraph 23 of the aforesaid judgment, according to him, is the

answer not only to the question raised but to the argument advanced by the prosecutor. Paragraph nos. 23 and 24, read as under :

> *"23. In this context, it is crucial that we also address the final issue before us, i.e., the question of* the *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.*
>
> *24. 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."*

23. He thus submitted that it remains within the court's jurisdiction to interpret the law in its correct form. Discussing the law laid down by the Hon'ble Apex court, first, it would be necessary to

mention here that in the case of **Afjal Ansari** (Supra), the disqualification of the applicant was under Section 8 of the Representation of the People Act, 1951 . Section 8 of the Representation of the People Act deals with disqualification on conviction for certain offences, and it gives the list of those offences. At this stage, it is necessary to mention here that Section 8, more particularly, Sub-Section 1 clause (a) to (n) speaks about disqualification on the ground of conviction for violation of specific provision or specific statute. Sub-Section 2 of Section 8 speaks about the conviction for contravention of any law providing for the prevention of hoarding or profiteering, or any law relating to the adulteration of food or drugs, or any provisions of the Dowry Prohibition Act.

24. Coming to the case at hand, i.e. Section 10 of Sub-Section 1 clause (a)of Maharashtra Municipal Corporations Act, it comes into play, when the offence is one of moral turpitude. As already stated, in case in hand, the length of the sentence would not make any difference, but the conviction for an offence of moral turpitude would trigger Disqualification.

25. At this stage, the judgment cited by Mr. Gangakhedkar in the case of **State Bank of India** (Supra) needs to be taken into consideration. The gist of the aforesaid judgment would be the test whether the act committed by the person could be considered to be of a

depraved character or a person who was to be looked down upon by society. The moral turpitude is also defined as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

26. The question of moral turpitude was also dealt with by the Allahabad High Court in the case of **Buddha Versus Naumi Lal, reported in 1965 Supreme (Online) (All) 32**, more particularly, paragraph nos. 23 to 27, which read as under :

> *"23. The first question that arises in the present case is whether the conviction of a person under S.7/16 of the Anti - Adulteration Act disqualifies him from being nominated or elected to the office of Pradhan on the ground that the offence in question involves moral turpitude. According to clause (h) of S.5A of the Act, a person"convicted of an offence involving moral turpitude.' would be disqualified from being chosen, nominated or appointed to the office of Pradhan. The initial question that has to be answered is what the meaning of the expression"moral turpitude*" is. *The expression"moral turpitude" does not appear to have been defined in any Act. In Aiyar's Law Lexicon, 1940 Edition, its meaning is stated as follows: -*
> *"Moral turpitude. Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (Ame. Cyc.)"*
> *The meaning of"morality" is stated as follows: -*
> *"Morality. Morality is defined by Paley to be 'that science which teaches men their duty / and the reason of it.' To*

make a contract against morals void as being against public policy, it must be against sound morals, and not merely against the morals of the times."

24. In AIR 1963 SC 1313, Gajendragadkar, J. (as he then was), while discussing the meaning of"moral turpitude" in connection with the conduct of an advocate, observed as follows :
"In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression"moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude."

25. In the case of 1961 R D 186 (All), the meaning of the expression as used in S. 5 - A of this very Act came up for consideration before this Court. In this case, one Shiva Nand, who was convicted of an offence punishable under the Public Gambling Act, was elected to the office of Pradhan of a Gaon Sabha. An election petition was moved against him by Avadh Narain, a contesting candidate, on the ground that a *conviction for an offence under the Public Gambling Act involves moral turpitude. The Sub-Divisional Officer upheld the contention of Avadh Narain and set aside the election of Shiva Nand and declared a casual vacancy. Shiva Nand filed a petition under Art. 226 of the Constitution challenging the validity of the order of the Sub-Divisional Officer and praying for a writ of certiorari to Quash that order. This petition was dismissed by a learned single Judge on the ground that the view which the Sub-Divisional Officer took of the conviction of the appellant under the Gambling Act was not such an unreasonable view as to entitle him to interfere in the matter by way of writ and to quash the order. A special appeal against this order was filed by Shiva Nand. This special appeal came up for hearing before a Bench consisting of Mootham, C.J. and Raghubar Dayal, J. The two learned Judges took different views on the matter. Mootham, C.J., held that a conviction for* an *offence under the Public Gambling Act*

does not involve moral turpitude. On the other hand, the other learned Judge took a contrary view. The question was referred to a third Judge, Mukerji. The judgment of Mukerji, J., contains certain instructive and relevant observations in this regard. While referring to the Public Gambling Act. They *observed that the said Act was meant to provide punishment for species of acts"which caused common injury, danger or annoyance to the public. The enactment, therefore, was meant to subserve a social end or, what may be called in modern forensic language, a type of 'social legislation'." He further observed as follows :*

"It is fairly well known that practically every civilised country now has laws either prohibiting gambling in certain forms or regulating gambling." Subsequently, he made the following observation :

Ideas of morals often undergo changes in different periods of a country's history. It is also true that different people *of the world sometimes differ as to whether a particular act is moral or immoral. Whenever a question has to be considered as to whether a certain act is moral or immoral, one has to consider as to how that act is viewed by the society or the community, as the case may be, and if the society or' the community views such act as involving moral turpitude, then even though some particular individual may not consider it so will mot make the act a moral one or a praiseworthy act. Therefore, whether an act involves moral turpitude or does not, has to be determined not necessarily on abstract notions of the rights and wrongs involved or the harm or good coming out of the act, but how that act is looked upon by the society where the act has been committed." Subsequently, he observed as follows :*

"A gambler has never been looked upon with favour. He always incurred the calumny of his fellow men. Such being the position a person, who has suffered punishment however small it may have been and however far back into the past it may have been, must be held to be guilty of a moral wrong and, therefore, his conviction must, in my opinion, be held to have involved moral turpitude within the meaning of clause (h) of S. 5 - A of the U.P. Panchayat Raj Act."

26. In Mangali v. Chakki Lal, AIR 1963 All. 527, A.P. Srivastava, J. held that no absolute standard can be laid down for deciding whether a particular offence is to be considered one involving moral turpitude. The question will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. The tests which should ordinarily be applied and which should in most cases be sufficient for Judging whether a certain offence does or does not involve moral turpitude appear to be (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general, (2) whether the motive which led to the act was a base one and whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. (Vide headnote – A).

27. In Baleshwar Singh v. District Magistrate, AIR 1959 All. 71, J.K. Tandon, J. observed that the expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude. Still, it *would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to society in general. If, therefore, the individual charged with a certain conduct owes a duty, either to another individual or to society in general, to act in a specific manner or not to so act, and he still acts contrary to it*. He does *so knowingly; his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man. (Vide* head-note *E).”*

27. When discussing moral turpitude, it was observed that determining whether an act is moral or immoral requires considering how society or the community views it. If society classifies an act as involving moral turpitude, an individual's personal belief to the contrary does not make the act moral or absolve it.

28. As far as the applicant is concerned, he is convicted of the offences as stated above. The manner in which the incident had taken place would clearly reveal that the public property was damaged, a public servant was assaulted, and an unlawful assembly was also formed. The further caused common injury, danger and annoyance to the public. So far as the contention of Mr. Gangakhedkar, that conviction was awarded to the applicant only based on dock identification, suffice it to say that the trial court has already dealt with the aspects of the case which are observed supra.

29. It would be further necessary to note that it is not for the court to decide whether the person should act in a particular manner or not , what is required to be looked into, whether the law permits a person who is convicted for the commission of an offence of moral turpitude to be allowed to get elected as a councillor . The provisions of the Maharashtra Municipal Corporations Act stated above are crystal clear and need no elaboration. The law is thus interpreted as it is.

30. Further, the stay of conviction cannot be granted as a matter of right, and an exceptional or clear case must be made out. The contention of learned counsel Mr. Gangakhedkar that his client is a social worker attached to various social organisations, as evidenced by the record, suffice it to say that the Court is not dealing with the character of the present applicant, but rather with the disqualification and applicability of the provisions of Section 10 (1) (a) of the Maharashtra Municipal Corporation Act.

31. According to Mr. Gangakhedkar, the applicant is also a lawyer and documents to that effect are also produced on record. In light of the discussion made above, it is not material to deal with aforesaid aspect.

32. Ms. Bhosale, learned APP has then contended that the judgment of **Afzal Ansari** (supra) cannot be read in isolation and in that case, it was the person who was the 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. She contended that it is not an absolute rule that, just because a person is an elected representative or wishes to contest an election, a stay of conviction must be granted. She submitted that the very notion of irreversible harm is secured based on factors including individual

criminal antecedents, the gravity of the offence, and its vital social impact, while simultaneously considering the facts and circumstances of the case.

33. According to her, the act committed by the applicant, which resulted in his conviction, also caused damage to public property, and the mob at the relevant time was led by the son of the Member of the Legislative Assembly. The passengers in the public transport vehicle were frightened, and even stones were pelted, due to which some sustained injuries. She submitted that one Manisha Pawar – PW 10 - during the discharge of her public duty was also one of the victims of the crime. She submitted that unlawful assembly was armed with stones, sticks, wooden logs, and iron rods, and that stones were pelted on ST buses and police vehicles, resulting in a loss of Rs. 2,35,000/-.

34. She, therefore, submitted that the act clearly constitutes one of moral turpitude. It is worth noting that the act of the applicant can be said to be the act constituting an act of moral turpitude since it was baseless and was in breach of a social duty that a citizen owes to fellow citizens or to society. The conviction awarded to the applicant can also be characterized as one based on moral turpitude, as the flow of traffic was obstructed and the city in that particular area came to a haltfor substantial time . Public servants are the backbone of the

institution, and any assault on them by a private individual, for agitation, by taking the law into their own hands, would constitute the offence of moral turpitude.

35. Mr. Gangakhedkar has also relied upon the judgment in the case of **Chandrakant Versus State of Maharashtra, arising out of SLP (CRL.) No. 1360/2022, with Criminal Appeal No.__/2022 arising out of SLP (CRL.) No. 2353/2022,** more particularly, the order dated 15.12.2022, by which honourable apex court court has stayed the conviction of the applicant therein because the conviction of the co-accused in that case was stayed by Division Bench of Bombay High Courtvide order dated 27.01.2020. He also relied upon the order dated 27.01.2020, passed by the Division Bench of this court in Interim Application No. 1288/2019 in Criminal Appeal No. 1584/2019. He contended that the applicant therein was convicted for offences punishable under Sections 177, 201, 406, 409, 411, 420, 465, 468, 471 read with Section 120-B, 109 and 34 of the Indian Penal Code as well as under Sections 13 (1) (c), 13 (1) (d) of the Prevention of Corruption Act, and his conviction was suspended. He contended that at the relevant time, the applicant therein was a councillor / Corporator of the concerned Municipal Council and Director of the concerned Bank. He then submitted that, having regard to his disqualification under the

provisions of the Maharashtra Co-Operative Society Act, he approached the Division Bench, and his conviction was stayed.

36. There is merit in an argument advanced by Mr. Gangakhedkar and the observations made in the said order cannot at all be disputed. Still, the fact remains that, in that case, it was observed that the applicant therein had not signed a single cheque during his tenure; or was giving favours to the particular developer. Further it was not the case of prosecution that the applicant therein had given anything, directly or indirectly, from the said project. These facts influenced the court, and consequently, a stay of conviction was granted.

37. Per Contra, in the present case, the prosecution has specifically come with a case that it was the applicant who had pelted the stones and caused damage to the public property.

38. Mr. Gangakhedkar, then relied upon order dated 02.06.2016, passed by the Co-ordinate Bench of this court in Criminal Application No. 2887/2016 in Criminal Appeal No. 343/2016, and has contended that in that case the appellant was member of legislative assembly and his conviction was under Section 353 read with Section 149 of the IPC and sentence imposed upon that appellant was of one year, so also his condition was under section 143 of the IPC, and this

court had stayed the conviction. He further submitted that the conviction was also under Section 304 (Part II) of the IPC, and in another case under Section 120-B and 420 read with Section 144 of the IPC, and in those cases, the stay of conviction was granted. He then contended that in the present case, also, the question pertains to Sections 143, 147, 148, 149, 332, 341, 353, and 427 of the IPC, and the sentence should be suspended.

39. I have gone through the said case, the conviction of the applicant therein was under Sections 353, 149, 304 (Part II), 120 B, 420 of the IPC, and at the relevant time, the appellant was sitting MLA from a particular constituency and he had shown his wish to contest the election of Chairman of the Co-operative sugar factory. In that case, the court observed that since the applicant therein would be disqualified from filing the nomination form for the directorship of the sugar factory, of which he was the Chairman and since action would entail serious consequences; the conviction was suspended. In the said case, the question was not whether the disqualification was based on moral turpitude or not, and therefore, the said judgment will not come to the aid of the accused.

40. Mr. Gangakhedkar, then, also relied upon the judgment in the case of **Rahul Gandhi Versus Purnesh Ishwarbhai Modi and** another**,**

reported in (2024) 2 SSC 595, and has contended that even in that case, the conviction was suspended. There is absolutely no dispute regarding the law laid down in the aforesaid judgment. Still, the distinguishing facts in that case are that the applicant therein was convicted of an offence punishable under section 499 of the IPC, which was non-cognizable. The distinction must be drawn between crimes against society and crimes against an individual. The act committed by the present applicant is against society. In contrast, in the case of **Rahul** Gandhi (supra), it can be said to be a crime against an individual.

41. Ms. Bhosale, then finally invited my attention to the judgment in case of **Sunil Chhatrapal Kedar Versus State of Maharashtra, reported in AIROnline 2024 Bom 1052,** more particularly, paragraph no. 29, which read as under :

> *"29. The ground raised by the accused is that his right of representation would* be affected*, in view of disqualification, in the light of Section 8 (3) of the R.P. Act. The purpose of the said Section is to ensure that a person with* a *criminal record* is *not elected to public office, and this is* a *legitimate aim in a democracy. Disqualifying a person who has been convicted of a serious* offence *from holding public office is in the interest of maintaining the integrity and credibility of* the *democratic process."*

42. The submission made by Ms. Bhosale is worth noticing,but at the cost of repetition, it is mentioned that the court is not going to decide how the elected representative should function. The question is

whether the appellant meets the criteria for suspending the conviction. As previously stated, the provisions of the Maharashtra Municipal Corporations Act, more particularly Section 10(1)(a), clearly deals with the disqualification of a person convicted of an offence involving moral turpitude. Furthermore, the discussion above shows that there was sufficient material against the present appellant, as the trial court found. Therefore, I am of the view that the applicant makes out no case for a stay of conviction. Hence, the following order is passed :

ORDER

i. Criminal Application is rejected.

ii. Needless to mention that these observations are *prima facie* in nature.

(RAJNISH R. VYAS, J.)

SPC