

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 927 OF 2015
IN APEAL/369/2015 WITH APEAL/369/2015

PARMESHWAR S/O GUJAT TOORI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Naik Dhananjay A.
APP for Respondents State: Shri U.S.Mote

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CORAM : M.T.JOSHI,J.
DATED : 27TH AUGUST, 2015

ORDER :-

Heard both sides.

2] The present applicant i.e. the original accused no.2 before Sessions Court was facing trial for the offences punishable u/s 302, 323 r.w. 34 of IPC. The Sessions Court convicted both accused for the offences punishable u/s 304 part II r.w. 34 of IPC and sentenced both of them to suffer R.I. for 10 years and to pay fine of Rs.5000/- each, in default of payment of fine, to suffer R.I. For six months each, therefore, the present application is preferred for suspension of the sentence and for release of the applicant i.e. original accused no.2 on bail.

3] The prosecution case would reveal that the present applicant alongwith co-accused was working as a labour on erection of high tension electric towers and for that purpose, they were staying in one field in village Nilajgaon. They used to reside in tent. They had come

for their livelihood from Pipradih, Dist. Bokaro, Jharkhand State. The deceased was their manager. According to the prosecution case, the wages of the employees i.e. of both accused were not paid for two months. Therefore, both of them had assaulted deceased and at that time, they were asking the deceased to pay their salaries. The allegations would further show that so far as accused Ganesh Moonda (not before me) was concerned, he pressed neck of the deceased while present applicant Parmeshwar was assaulting deceased by means of kicks and blows.

4] The post mortem report would show that the deceased has suffered fracture to hyoid bone causing the death.

5] The learned counsel for appellant/applicant submits that considering motive, that the present applicant/appellant was merely demanding his salary of two months and that in the incident, he allegedly kicked the deceased, the learned Sessions Court ought not to have convicted him for the offence punishable u/s 304 Part II r.w. 34 IPC. He further submits that present applicant/appellant has already suffered imprisonment for 2½ years since he was not released on bail.

6] Learned APP however, opposed the application on the ground that there are eye witnesses to the incident.

7] Considering the background of the case as detailed supra, in my view, substantive sentence needs to be suspended. Applicant needs to be released on bail. However, since he is from another State, certain stringent conditions are required to be imposed so that he will be available in future for hearing of the appeal. Hence I pass following order :

ORDER

The application is hereby allowed. The substantive sentence is hereby suspended. On payment of fine amount, the applicant be released on bail on execution of PR bond of Rs.40,000/- and also two solvent sureties in the sum of Rs.20,000/- each. The application is accordingly disposed of.

(M.T.JOSHI,J.)

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