

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CRIMINAL APPLICATION NO.483 OF 2015
IN
CRIMINAL APPEAL NO.708 OF 2014**

Mukesh Jitendra Swami ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Viresh V.Purwant, Advocate for the Applicant.
Mrs.S.V.Gajare, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 28TH APRIL 2015

P.C.

1. Heard Mr.Viresh V. Purwant the learned counsel for the applicant. Heard Mrs.S.V.Gajare, the Additional Public Prosecutor for the respondent/State.

2. The applicant has been convicted of an offence punishable under Section 307 of the Indian Penal Code (IPC), Section 353 of IPC, Section 332 of the IPC by the learned Additional Sessions Judge, Thane. The learned Judge imposed a sentence of Rigorous Imprisonment for five years with respect to the offence punishable under Section 307 of the IPC, a sentence of

Rigorous Imprisonment for one year with respect to the offence punishable under Section 353 of the IPC and a sentence of Rigorous Imprisonment for two years with respect to the offence punishable under Section 332 of the IPC. Additionally, the learned Additional Sessions Judge has imposed fine of Rs.1,000/- on each of the said counts. The substantive sentences have been made to run concurrently.

3. The appeal filed by the applicant challenging his conviction and the sentences imposed upon him has already been admitted. By the present application, the applicant prays that the substantive sentences imposed upon him be suspended during the pendency of the appeal and he be released on bail.

4. The applicant had previously also applied for suspension of sentences, but, that application came to be rejected. (Criminal Application No.1216 of 2014 dated 10th November 2014 Coram : A.R.Joshi J.)

5. While rejecting the said application, this Court *inter alia* observed that the applicant appeared to have committed breach of the conditions of bail, that was granted to him during the trial. A reading of the said order indicates that this has weighed with the Court in rejecting the prayer for suspension of sentences. Mr.Purwant submits that this observation has been based on factual error, as the learned counsel for the appellant, at

that time, was unable to explain why subsequently, the applicant was taken in custody, which was reflected from the order passed by the trial Court. Mr.Purwant submits that actually the applicant had not committed any breach of the terms and conditions of the bail and that, it was a lapse on the part of the learned counsel for the applicant not to have pointed out to this Court, paragraph 36 of the judgment delivered by the trial Court. It appears that the applicant was taken in custody only after he was held guilty and before he could be heard on the quantum of sentence. Thus, there has been no breach of the terms and conditions of bail, that was granted to the applicant during the trial and this factor cannot be disputed at all.

6. From the facts of the case as reflected from the impugned judgment, it is clear that the applicant was staging a protest against the Government action in what he alleged to be favouring a particular company. The applicant was apparently staging certain demonstration and had grievance against the concerned Government Authorities. The First Informant is a Tahsildar. The allegation against the applicant is that he poured some oily substance over the Tahsildar and when the Tahsildar pushed him, a match box fell down. Thus, that the applicant had a match box with him and had poured oily substance with the intention of setting the said Tahsildar on fire, is the allegation, which led to the accusation of an offence punishable under Section 307 of the IPC.

7. It is nobody's case that the applicant tried to take out the match box or attempted to ignite a match stick. There does not seem to be any Chemical Analysis Report showing the nature of the oily substance that was allegedly poured on the person of the First Informant.

8. Whether 'the act of pouring an oily substance, which is not shown to be of inflammable nature on the person of the victim, while possessing a match box', would amount to an attempt to commit murder, requires very serious consideration.

9. Considering the fact that the applicant is in custody for a period of one year and nine months, I am inclined to allow the application. This is particularly because in the ordinary course, the appeal is not likely to be taken up for final hearing within a short time.

10. The application is allowed.

11. Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the applicant shall stand suspended; and the applicant shall be released on bail in the sum of Rs.15,000/-, with one surety in the like amount.

(ABHAY M. THIPSAY J.)