

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.668 OF 2015****IN****CRIMINAL APPEAL NO.623 OF 2015**

Amit Vasant Tulsankar

..Applicant.

versus

The State of Maharashtra

..Respondent.

.....

Mr. Aniket Vagal for the Applicant.

Mr. H.J. Dedhia, Addl. P.P. for the State.

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CORAM : A.S. GADKARI, J.**9th July 2015.****P.C. :**

This is an Application for suspension of sentence under Section 389 of the Criminal Procedure Code by the Applicant. The Applicant is convicted and sentenced to suffer simple imprisonment for ten years and to pay fine of Rs.10,000/- by the Special Judge in SC/ST Special Case No.19/2013. The Appeal therefrom is admitted by this Court on 25th June, 2015.

2. It is the case of the prosecution that the complainant / victim Ms. Swati Vanmore was returning home along with her friend Ms. Laxmi Chawada (P.W.3) at about 6.30 p.m. on 24th April, 2013. The Applicant all of a sudden came from behind the complainant, caught hold of her neck in his left hand and put a chopper which was in his right hand on her throat. When the complainant tried to rescue from the clutches of

the Applicant, the complainant sustained injuries on her forehead and left cheek. It has come on record that, as the people gathered on the spot, the Applicant threw chopper on the spot and ran away. The learned Trial Court after taking into consideration, apart from other evidence, the testimony of P.W.1 complainant/victim, P.W.3, friend of the complainant and P.W.5, medical officer, has convicted the Applicant as aforesaid.

3. Heard Mr. Vagal, learned counsel for the Applicant and Mr. Dedhia, the learned APP. It prima facie appears that the version of P.W.1 is not supported by the medical evidence i.e. P.W.5 Dr. H.B. Mange. P.W.5 in his testimony has stated that after examination of P.W.1, he found linear abrasion on right side of her forehead and on the left cheek. In the cross-examination, P.W.5 has admitted that the linear abrasion are superficial injuries. The learned counsel for the Applicant submitted that after taking into consideration the evidence of P.W.5 – Dr. H.B. Mange, it appears that the Applicant has been erroneously convicted under Section 307 of the Indian Penal Code, instead of convicting him under Sections 324 or 325 of the Indian Penal Code. The learned APP on the other hand submitted that the offence committed by the Applicant is serious in nature. He also drew my attention to paragraph No.19 of the impugned judgment wherein it has been mentioned that on earlier two occasions, two separate offences were registered against the Applicant under Section 509 of

the Indian Penal Code and under Section 354 read with Section 509 of the Indian Penal Code on the basis of complaint by the complainant herein. The learned APP further submitted that the present crime committed by the Applicant is in furtherance of the earlier two acts committed by the Applicant and if the Applicant is released on bail, he will take revenge of P.W.1 complainant.

4. After taking into consideration the evidence on record and particularly in view of the evidence of P.W.5 i.e. the medical officer, I am inclined to suspend the sentence of the Applicant and release him on bail during the pendency of the present Appeal. The learned counsel for the Applicant on instructions from the relative of the Applicant submitted that the Applicant, after release on bail will reside at Panvel. The said statement is accepted. The Applicant shall be released on bail on the following conditions :

- i) The Applicant shall deposit the entire fine amount of Rs.10,000/- before his release from jail. It is made clear that the Applicant shall not be released from jail unless and until he deposits the entire fine amount with the Trial Court;
- ii) The Applicant shall be released on bail after furnishing a PR bond to the tune of Rs.30,000/- with one or two solvent sureties in the like amount;
- iii) During the period, while on bail the Applicant will reside at

Panvel, District Raigad;

- iv) The Applicant shall not enter the jurisdiction of the Mumbai Municipal Corporation, except for attending Special Case No.18 of 2013 pending on the file of Sessions Court, Mumbai. It is further directed that the Applicant shall directly attend the Court and shall go back to Panvel. While attending Special Case No.18 of 2013 the Applicant shall mark his presence intimating the Clerk of the said Court;
- v) The Applicant shall give the address where he will reside after release on bail at Panvel, District Raigad;
- vi) The Applicant while residing at Panvel shall attend the nearest police station once in a month on every Saturday of the first week of the said month between 9.00 a.m. to 11.00 a.m.;
- vii) It is needless to mention that the Applicant shall not contact and/or try to threaten the witnesses in the present case;
- viii) Any breach of the aforesaid conditions will make the Applicant liable for cancellation of bail.

The present Application is allowed in the aforesaid terms.

All the concerned to act on an authenticated copy of this order.

(A.S. Gadkari, J.)