

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CRIMINAL APPLICATION NO.1611 OF 2014
IN
CRIMINAL APPEAL NO.943 OF 2014**

Hajimalang Mahatab Nadaf ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

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Mr.Ujwal R. Agandsurve, Advocate for the Applicant.
Mrs.S.V.Gajare, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 15TH JANUARY, 2015

P.C.

1. The appeal filed by the applicant/appellant has already been admitted. By this application, the applicant – the original accused No.2 – prays that the sentence imposed upon him be suspended pending the hearing and final disposal of the appeal and that he be released on bail.

2. The applicant was prosecuted along with two others on the allegation having committed an offence punishable under Section 302 of the Indian Penal Code read with 34 of the Indian Penal Code. After holding a trial, the learned Sessions Judge,

Solapur acquitted the other two. He found the applicant guilty of only an offence punishable under Section 304 Part II of the Indian Penal Code. The applicant has been sentenced to suffer Rigorous Imprisonment for seven years and to pay a fine of Rs.10,000/-.

3. I have gone through the judgment delivered by the learned Sessions Judge.

4. It is clear that the learned Sessions Judge has doubted the version of the prosecution witnesses. This is clear not only from the fact that the other two accused were acquitted, but from the observations made by the learned Judge in paragraph 14 of the impugned judgment.

5. It appears that the applicant himself had sustained injuries on head, right ear, shoulder, right leg below knee, right forearm and had sustained injuries on other parts of his body also. The learned Judge in that regard observed that no light had been thrown by the prosecution as to how the applicant had sustained these injuries. The observations made in paragraph 17 of the impugned judgment indicate that the learned Judge was of the view that possibility of the applicant having been assaulted by the prosecution witnesses was apparent.

6. It appears that only one blow was given by the applicant to the deceased.

7. The applicant was on bail during the trial. There is no allegation that he has misused the liberty granted to him.

8. In the normal course, the appeal cannot be heard expeditiously. A number of arguable points have been raised.

9. In the circumstances, I am inclined to allow the application.

10. Pending hearing and final disposal of the appeal, the substantive sentence imposed upon applicant/appellant shall stand suspended; and the applicant/appellant shall be released on bail in the sum of Rs.50,000/- with one surety in like amount, on the condition to report to the trial Court on the first Monday of every calender month, till the disposal of the appeal.

Should the Court be closed on a given Monday, the applicant shall report to the trial Court on the next working day.

11. Hearing of the appeal is ordered to be expedited.

(ABHAY M. THIPSAY J.)