

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPLICATION (APPA) NO.287/2015****(Bhimraj Kisan Naik ..vs.. State of Maharashtra, through PSO Saleksa, Dist. Gondia)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R. G. Somkuwar, Advocate for applicant.

Mr. V. A. Thakare, A.P.P. for non applicant.

CORAM : V. M. DESHPANDE, J.

DATE : SEPTEMBER 2, 2015.

This is an application for suspension of sentence.

Heard Mr. Somkuwar, learned counsel for the applicant and Mr. Thakare, learned A.P.P. for the non applicant-State.

The applicant is convicted in Sessions Trial No.48/2006 dated 10.11.2014 by Sessions Judge, Gondia by which the applicant is convicted for the offence punishable under Section 326 of the IPC and he is directed to suffer rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-.

This Court had, on 07.05.2015, admitted the appeal. On the said date, this Court ordered that the application for bail will be considered subsequently i.e. after receipt of record and proceedings. Learned counsel for the applicant states that the notes of evidence and other material is placed on record. Therefore, the application is taken up for consideration.

The evidence of PW1-Pushpabai and PW4-Ganesh would reveal that at the time of occurrence, there was darkness and in the entire prosecution case, there is no source of light by which it can be said that PW1-Pushpabai and PW4-Ganesh were able to see that it is the only applicant who has assaulted on Rikiram. It is also brought on record by the prosecution through its evidence that at the relevant time, there were number of persons gathered since a meeting of Bachat Gat was going on.

The applicant is directed to suffer rigorous imprisonment of seven years. The applicant is in jail from 10.11.2014. Further, during the trial, the applicant was on bail and at no point of time, he has misused the liberty granted to him.

Looking to the fact that the applicant is sentenced for the limited duration and it will not be possible for this Court to take final hearing of the appeal in near future and looking to the nature of the evidence that is adduced in the prosecution case, I am of the opinion that the applicant has made out a case for suspension of sentence. That leads me to pass the following order.

ORDER

(i) Criminal application No.287/2015 is allowed.

(ii) The substantive jail sentence imposed by the Sessions Judge in Sessions Trial No.48/2006 shall stand suspended during the pendency of the present appeal.

(iii) The applicant shall be released on bail on he executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.

(iv) Bail before the trial Court.

(v) The trial court, while releasing the applicant, shall ensure that he has deposited the entire fine amount

JUDGE