

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.355 OF 2015
IN CRIMINAL APPEAL NO.211 OF 2015

(Iqbal s/o Jagannat Tiwari @ Iqbal Muslim Sain vs. The State of Maharashtra)

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

Shri R.M. Daga, Advocate for applicant.
Smt. K. Deshpande, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : SEPTEMBER 29, 2015

Heard Shri Daga, learned Counsel for the
applicant, and Smt. Deshpande, learned Additional
Public Prosecutor for respondent.

By this application, applicant/accused
Iqbal having been convicted by the learned Ad hoc
District Judge-1 and Addl. Sessions Judge, Nagpur
in Sessions Trial No. 445/2013 for the offence
punishable under Section 307 of Indian Penal Code
and sentenced to suffer rigorous imprisonment for 10
years and to pay fine of Rs.2000/- and in default, to

suffer simple imprisonment for two months and also convicted for the offence punishable under Section 4/25 of the Indian Arms Act and sentenced to suffer simple imprisonment for 6 months and to pay fine of Rs.1000/- and in default, to suffer simple imprisonment for one month, has sought suspension of sentence and release on bail.

Admittedly, applicant was charge-sheeted on the basis of supplementary charge-sheet filed against him and he was tried independently. Original accused no.1 Shamshad, who was tried earlier in the same crime, was sentenced for three years and his sentence is suspended by this Court vide order dated 11/3/2010 passed in Criminal Appeal No.108/2010. Shri Daga, learned Counsel for applicant, has contended that role attributed to original accused no.1 Shamshad is more grievous than that of applicant.

I have perused the impugned judgment and evidence available on record. On perusal of evidence of victim Sabir Ali, it is revealed that on the day of incident, while he was sitting along with Jamir and Imtiyaz, applicant along with co-accused

Shamshad arrived on the spot, armed with sword and on having some altercation of words, applicant assaulted the victim by sword, due to which he sustained injuries on his hand, wrist and fracture to his left hand. His thumb was amputated and co-accused Shamshad committed assault by sword on his head and neck. Oral evidence of victim corroborates with medical evidence placed on record by which it is noted that injuries sustained by victim due to assault by applicant is on hand and wrist as stated above and the author of injuries sustained by victim on his head is co-accused Shamshad. It is material to note that the learned trial Judge in paragraphs 12 and 17 of his judgment in respect of accused Shamshad, who was tried vide Sessions Trial No. 265/2009 has considered evidence of victim along with Doctor's evidence, which is stated above.

In that view of the matter, learned Counsel for the applicant has submitted that since accused Shamshad against whom there is a finding of trial Court of his committing assault by sword on head of victim, has been sentenced for three years

and his sentence is suspended by this Court, case of applicant is on better footing.

Having considered the evidence as discussed above, though applicant has been sentenced for a period of 10 years, I find that the applicant has made out a case for suspension of sentence pending appeal and for his release on bail as per order below :

Order

The applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.20,000/- with one surety in like amount. While on bail, applicant shall mark his presence with Police Station, Khaparkheda, Taluq Saoner, District Nagpur on first day of every month initially for six months and thereafter in the alternate month pending criminal appeal. The criminal application is disposed of accordingly.

JUDGE

khj