

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

Criminal Application [APPA] No.433 of 2015

in

Criminal Appeal No.101 of 2015

(Ambadas Daulatrao Khandare

vs.

The State of Maharashtra, through PSO Asegaon Purna, Chandur Bazar, District Amravati)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

Mr. A.C. Jaltare, Advocate for the Applicant.

Mr. V.A. Thakre, A.P.P. for the Non-Applicant/State.

CORAM : V.M. DESHPANDE, J.

DATE : AUGUST 24, 2015.

This is an application for suspension of substantive jail sentence and for grant of bail.

Heard Mr. Jaltare, learned Counsel for the applicant and Mr. Thakre, learned Additional Public Prosecutor for the State.

The applicant, who is accused No.1, is convicted by the learned Additional Sessions Judge-1, Achalpur on 20/02/2015 in Sessions Trial Nos.14/2006 and 26/2007 for the offence punishable under Sections 304-I read with Section 34 of the Indian Penal Code and he is directed to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-.

After hearing the learned Counsel for the applicant and the learned A.P.P. and after having gone through the

impugned judgment, it is crystal clear that the learned Judge of the Court below himself has reached to the conclusion that deceased Sanghapal was aggressor. In paragraph 45 of the impugned judgment, the learned Judge has reached to the conclusion that the present applicant had purchased the agricultural property from Sau. Vijaya Humane, who is daughter of injured Sukhadeo. The learned Judge, in my view, has rightly reached to the conclusion in absence of any lease-deed on record to show that Sanghapal or Sukhadeo were in possession of the agricultural field. The evidence of the prosecution would reveal that the complainant-party was aggressor and in the right of private defence, the incident has occurred. In that view of the matter, there was no intention on the part of the present applicant to cause any injury.

The applicant was on bail during the trial. It is not reported at any point of time that he has misused the liberty granted to him. Merely because the applicant was on bail, that is not sufficient to release him on bail after the conviction. Since the parameters for consideration of the bail application after securing the conviction are all together different. However, in view of the specific finding recorded by the learned Trial Court that the complainant-party or the deceased was aggressor, in my view, the applicant is entitled to be released on bail. Hence, the following order :

- ➔ The application is allowed.
- ➔ The substantive jail sentence imposed upon the applicant by the learned Additional Sessions Judge-1, Achalpur on 20/02/2015 in Sessions Trial Nos.14/2006 and 26/2007 stands suspended.
- ➔ The applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.20,000/- with one solvent surety in the like amount before the trial Court.
- ➔ Payment of fine before the Court below shall be the condition precedent for bail.
- ➔ The applicant shall remain present before this Court at the time of final hearing.
- ➔ With these, the application is disposed of.

JUDGE

**sdw*