

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 204 OF 2016
IN
CRIMINAL APPEAL NO. 122 OF 2016

Sagar Pratap Mohite. ... Applicant.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Prashant S. Hagare, advocate
for Applicant.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : MARCH 3, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State.

2 This is an application under Section 389 of the Code of Criminal
Procedure, 1973 seeking suspension of substantive sentence. The

applicant herein happens to be the accused No. 5 in Sessions Case No. 38 of 2008. The learned Additional Sessions Judge at Malshiras vide Judgment and Order dated 6/2/2016 has been pleased to convict the applicant for the offence punishable under Section 147, 148 of the Penal Code and sentenced to suffer R.I. for two years and to pay fine of Rs. 5000/- I.d. to suffer R.I. for 3 months. He is convicted for offence punishable under Section 307 read with Section 149 of the Indian Penal Code and sentenced to suffer R.I. for 6 years and to pay fine of Rs. 10,000/- I.d. R.I. for 6 months.

3 Learned Senior Counsel appearing for the applicant submits that the applicant was protected by way of pre-arrest bail during the pendency of the trial and that he has not committed breach of any conditions imposed upon him. That at the time of incident, he was a young lad.

4 The learned Senior Counsel has further drawn the attention of this Court to the substantive evidence of P.W. 2, wherein P.W. 2 has

categorically stated that after P.W. 2 was assaulted by the other accused and when he fell on the ground, his younger brother Kishor had been to the spot to rescue him and at that stage, the present applicant is alleged to have threatened Kishor Aasbe with knife and restrained him from intervening in the said incident. Learned Senior Counsel submits that the only act attributed to the present applicant was that he was present at the scene of offence and that he was armed with the knife. According to the learned Senior Counsel, no overt act of assault has been attributed to the present applicant.

5 The learned APP submits that the very fact that the applicant was armed with a knife would clearly indicate that he had shared the common object with the other accused to assault P.W. 2.

6 Prima facie, it appears that the applicant was a member of the unlawful assembly. However, he had restrained himself from assaulting P.W. 2. Considering the fact that the applicant was granted pre-arrest bail during the pendency of the trial, and that the

sentence imposed upon him is short term sentence, the applicant deserves to be enlarged on bail during the pendency of the appeal.

7 It is made clear that the order of grant of bail to the present applicant is based upon the evidence which indicates the specific act attributed to him.

8 Hence, following order :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby suspended. The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.

(iii) The applicant shall report to the Court of Sessions, Malshiras once in 6 months on the date specified by the concerned Court.

Upon failure to attend on two consecutive dates, the prosecution is at liberty to move for cancellation of bail.

9 The application is disposed of accordingly.

The parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)