

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1035 OF 2016

IN

CRIMINAL APPEAL NO.541 OF 2016

RAVINDRA DIVAKAR SARVGAUD

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.A.PMundargi, Senior Counsel, i/b. Mr.Ritesh Thobde, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 30th AUGUST 2016.

P.C. :

1 By this application, original accused no.6 Ravindra, who is convicted by the learned Additional Sessions Judge, Pandharpur, has sought suspension of sentence and bail. Learned counsel for applicant has submitted that out of 11 accused, who stood the trial, 4 accused came to be convicted, including the applicant for the offence punishable under Section 307 along with other allied offences and by referring to evidence of injured as well as that of Medical Officer has submitted that except for injuries sustained by PW5 Pravin alias Wetal,

none of the injured had sustained serious injuries. On the basis of evidence on record it is further contended that the injuries alleged to have been caused by applicant to PW2 Amar are simple in nature and in that view of the matter, has contended that application is liable to be allowed pending appeal, as applicant was on bail during trial and has no criminal antecedents to his credit.

2 Learned APP has opposed the application and referring to the evidence on record, submitted that injuries sustained by injured are on vital part, and secondly, on the count that conviction imposed upon applicant is for a period of 10 years, and as such, is not entitled for grant of suspension of sentence and bail.

3 In the background of submissions advanced by learned counsel for both the sides, I have perused the documents where from it reveals that applicant along with three other accused came to be convicted for the offences punishable under Sections 143, 147, 148, 307 read with Section 149 IPC, Section 324 read with Section 149 IPC, Section 504 read with Section 149 IPC and Section 506 read with Section 149 IPC. The maximum sentence imposed upon applicant out of above offences is under Section 307 read with Section 149 IPC,

wherein applicant on conviction came to be sentenced to suffer rigorous imprisonment for 10 years and is directed to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for 1 year. Sentence imposed on other counts is ranging between imprisonment for 6 months to 3 years. All the sentences are ordered to run concurrently.

4 Admittedly, it appears that there are counter cases out of which present case arose, as from the evidence of PW1 Avadhoo – complainant, it has come on record that accused no.1 has also filed a cross complaint against complainant in this case, wherein, they are charge-sheeted.

5 With reference to involvement of applicant, from the evidence on record, it reveals that role attributed to applicant by PW1 Avadhoo, injured, is about applicant committing assault on PW2 Amar by iron bar on his head and neck. Evidence of PW1 Avadhoo finds corroborated by evidence of PW2 Amar, the injured, wherein he stated that he was assaulted by applicant over his neck. Similarly, PW6 Nitin has further corroborated evidence of above witness when he has stated that applicant committed assault on PW2 Amar by iron bar on his head.

It, thus, appears that, from the evidence of PW1 Avadhoo, PW2 Amar and PW6 Nitin, applicant is stated to have assaulted PW2 Amar by iron bar over his neck and head. Except for above, there is no involvement of applicant as assailant of any of the other injureds.

6 In the background of evidence of injured himself together with evidence of eye witnesses, as aforesaid, evidence of PW11 Dr.Prakash is necessary to be considered to ascertain the gravity of injuries sustained by PW2 Amar. It reveals that as a Medical Officer, he has examined PW2 Amar, and found him to have sustained one injury on the occipital region, admeasuring 5 cm, muscle deep which is certified to be simple in nature, possible by hard and blunt object, PW2 Amar was, referred for further treatment to Sub-District Hospital. However, it appears that he preferred to go to PW12 Dr.Maruti Takale, General Surgeon having ICU hospital at Pandharpur, where he was examined and is certified to have sustained one CLW on the occipital region admeasuring 3 x 2 x 1 inch and 2 contusions. All the injuries are stated to be possible by iron pipe. It is noted that said doctor is silent with regard to nature of injuries, if are grievous or simple in nature. In that view of the matter, and on considering specific evidence of PW11 Dr.Prakash, injury sustained by PW2 Amar appears to be simple in nature.

7 Even otherwise, on considering case of prosecution, from evidence of Dr.Prakash, it further reveals that apart from PW2 Amar there are other injureds like Vikas Kamble, Pradeep Sarvagod, Vitthal Tondse, Sujit Eknath, who are medically examined by PW11 Prakash. However, none of these injureds are examined as witnesses, who are certified to have sustained simple injuries except, PW5 Pravin alias Wetal, who on clinical examination though is found to have sustained simple injury on occipital region, on his further examination by Dr.Maruti is certified to have sustained injury, which in the absence of medical treatment is stated to be fatal.

8 Having considering evidence as aforesaid, and in view of admission by Dr.Maruti that injury sustained by PW5 Pravin alias Wetal was simple and was possible by fall on rough surface and since it is further admitted that injuries sustained by all other injureds were simple in nature and may be possible by fall on rough surface, prima facie it is found that there is no evidence to establish that in the incident of assault alleged to have been committed by applicant on PW2 Amar, provisions of Section 307 of IPC are attracted.

9 In that view of the matter, and as applicant was stated to be on bail pending trial, and as it is no case of prosecution that he has misused liberty granted to him, application is liable to be allowed by suspending sentence imposed upon applicant and by granting bail pending appeal, as per order below :

- i) Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.20,000/- with 1 surety in like amount.
- ii) While on bail, applicant shall mark his presence to City Police Station, Pandharpur, once in three months on first day of each month, initially for nine months, and thereafter, once in six months, pending appeal.

(P. N. DESHMUKH, J.)