

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD

---

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

Court's or Judge's orders

---

CRIMINAL APPLICATION NO. 3115 OF 2017

IN

CRIMINAL APPEAL NO. 271 OF 2017

NIKHIL S/O BABAN LATE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Gaware N.V.

APP for Respondent/State: Mr. G.O.Wattamwar

...

**CORAM : V.L. ACHLIYA, J.**

**Dated: JULY 14, 2017**

**ORDER :**

The applicant - original accused No.4 has moved this application seeking suspension of sentence and release him on bail during pendency of appeal, for the reasons set out in detail in the application as well as, the grounds raised in the memo of appeal.

2] Heard the learned counsel for the applicant and A.P.P for the State. Perused the impugned judgment and order passed by the trial court as well as record and proceedings.

3] The applicant – Accused No.4 was tried along with co-accused for committing offences punishable under sections 307,379,323,504,506 r/w 149 of Indian Penal Code. He was also tried for committing an offence punishable under section 37(1)(3) r/w 135 of the Bombay Police Act and under sections 3 r/w section 15 of Protection of Environment Act with allegations that they attempted to kill the revenue officer and police personnel when they conducted the raid and tried to apprehend the persons found to be illegally excavating and transporting sand from the bed of river Pravara. On conclusion of the trial the appellant i.e accused No.4 along with other co-accused are held guilty of committing offences punishable under section 395,506 r.w. 149 and section 143,147 of the Indian Penal Code and section 3 r/w section 15 of Protection of Environment Act. The applicant is individually held guilty of committing an offence under section 307 of the Indian Penal Code and awarded the sentence of rigorous imprisonment for the period of 5 years and fine of Rs. 20,000/-. Being aggrieved the applicant preferred this appeal and prayed for release on bail during the

pendency of the appeal.

4] Mr. Gavare, learned counsel for the applicant strenuously contended that impugned judgment and order passed by the trial court convicting the applicant for aforesaid offences is not sustainable in law. It is contended that even if we consider the facts of the prosecution case and testimonies of the witnesses then at the most accused can be held guilty of offence of illegal excavation of the sand and attempt to commit theft of sand. He submits that by no stretch of imagination it can be inferred that unlawful assembly was formed by the accused persons with object to commit an act of dacoity or assault the government officers. By referring the testimonies of the P.W.4 and P.W.5 the material witnesses examined by the prosecution, who alleged to be attempted to be killed by applicant. Learned counsel submits that even if their testimony remains unchallenged still no offence u/s 307 of IPC i.e. attempt to commit murder is prayed against the applicant. He has contended that the witnesses P.W. No.4 and P.W. No.5 have deposed that the present applicant tried to run over them with the vehicle when they tried to obstruct him which itself sufficient to infer that the appellant had no intention to kill or to hurt them. In this background it is contended the conviction of the appellant under section 307

of the Indian Penal Code is not sustainable and appellant have good case to succeed in the appeal. He has further submitted that even the offence under section 395 of the Indian Penal Code is proved against the applicant as there is no evidence to show that accused committed any act of dacoity. In this background the learned counsel urged to release the applicant on bail.

5] On the other hand, learned A.P.P appearing for respondent - State opposed the application with contention that there is strong evidence to support the conviction of applicant under section 395 as well as 307 of the Indian Penal Code as well as section 3 r/w section 15 of Protection of Environmental Act. By referring the testimonies of the P.W.4 and P.W.5, the learned A.P.P contended that, there is strong evidence to sustain the charge under section 307 of the Indian Penal Code against the applicant.

6] In order to appreciate the submissions advanced, I have perused the impugned judgment as well as record and proceedings called from trial court. In order to prove the guilt under section 307 of the IPC the prosecution has examined police constable Prashant Jadhav (P.W.4). He has categorically deposed that, the present applicant who was

driving tipper bearing registration No. MH-11-M-5145 attempted to take away his vehicle from the spot. When he along with Circle Officer Vishnupant Gaikwad (P.W. No.5) tried to prevent applicant from running away with said vehicle, the applicant tried to run over them by said vehicle. They survived as they escaped to be run over by the vehicle driven by applicant. On the same line Vishnupant Gaikwad, (P.W. No.5) the Circle Officer deposed as to incident as well as the act of the accused to run over them with the dumper. For attracting the offence punishable under section 307 of the IPC, what is relevant is the intention of the accused. After going through the testimony of the P.W.4 and P.W.5, I am of the view there is a prima facie case against applicant to sustain the conviction under section 307 of the Indian Penal Code. Although the applicant has taken defence that at the time of incident he was installing motor pump in the well dug in the river bed to irrigate his agricultural land situated nearby to river bed but in the statement recorded under section 313 of the Code of Criminal Procedure the applicant has not offered such explanation.

7] Considering the overall facts of case, nature of offence and sentence awarded I am not inclined to entertain the application. In the result, application deserves to be rejected.

8] It is clarified that observations made as above are made for the limited purpose of deciding the bail application and same shall not be treated as observations made as to the merits of the case. Appeal to be heard on its own merit.

9] Record and proceedings be send back to trial court for preparation of paper book.

**[V.L.ACHLIYA, J.]**

YSK/\*