

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3427 OF 2017
IN
CRIMINAL APPEAL NO.303 OF 2017

Aslam Babulal Shaikh ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. A.D.Shinde, Advocate for Applicant.

Mr. S.P.Deshmukh, APP for Respondent-State

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**CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.**

DATED : 31st October, 2017

PER COURT :-

1. Heard learned counsel appearing for the Applicant-Appellant and learned APP appearing for the Respondent-State. Learned counsel appearing for the Applicant submits that the statement of P.W.3 Ayyub Banemiya Shaikh has been recorded after seven days of the alleged incident, though he was accompanying Investigation Officer. It is submitted that though P.W.3

has alleged that the assault was by sharp weapon, however, medical evidence demonstrates that the injury is by iron rod and not by the sharp weapon. Even the alleged recovery does not support the prosecution case. The Trial Court has recorded the perverse findings and convicted the applicant-appellant. The Trial Court has not considered that the P.W.3 is an interested witness.

2. On the other hand, learned APP appearing for the Respondent-State relying upon the findings recorded by Trial Court, the evidence of P.W.3 and Medical evidence and submits that prima facie findings recorded by the Trial Court are in consonance with the evidence brought on record by the prosecution and therefore, at this stage, the application for suspension of sentence and bail deserves no consideration.

3. We have heard the learned counsel appearing for the applicant-appellant and learned APP appearing for the State for considerable period. We have carefully perused the evidence of P.W.3 coupled with the medical

evidence. In our prima facie opinion, the findings recorded by the Trial Court are in consonance with the evidence brought on record. We do not wish to elaborate reasons any further since the appeal filed by the applicant-appellant is pending for consideration.

4. The applicant-appellant was not on bail during trial. For the reasons aforesaid, we are not inclined to entertain the application. Hence, the application for suspension of sentence / bail stands rejected.

5. Hearing of the appeal stands expedited.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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vmk/-