

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.85 OF 2017
in
CRIMINAL APPEAL NO.49 OF 2017

Jaideep Sharad Kulkarni Appellant
vs
The State of Maharashtra .. Respondent

Mr.Saurabh Raut a/w Mr.Tanaya Goswami and
Ms.Sneha Sanap I/b Mr.Ajinkya Jaibhave for Applicant
Mr.Amit Palkar APP for State-Respondent

CORAM: A.M.BADAR, J
DATE: 27 JANUARY 2017

P.C.

1. This is an application for suspension of the sentence and releasing the Accused/Applicant during the pendency of the Appeal filed by him which is admitted for Final Hearing today. The Applicant/Accused has been convicted for the offence under section 307 read with 34 of the Indian penal Code and is sentenced to suffer R.I. for five years and to pay fine of Rs.1000/- in default to suffer R.I. for one month.

2. Heard learned Advocate for the Applicant/Accused. He argued that even if the evidence of the prosecution witnesses is accepted, then also an offence under section 307 of the Indian Penal Code cannot be made out against the Applicant/Accused. For this

purpose, he drew my attention to the evidence of injured victim as well as that of PW 9 Dr.Rajendra Dattatraya Dusane.

3. The learned APP opposed this Application by contending that evidence on record shows that there was an attempt to commit the murder of Mahendra Kamble.

4. I have carefully considered the rival submissions and have also gone through the impugned Judgment and order apart from the deposition of witnesses. The incident in question took place at the liquor shop. The cause of giving rise to the incident is accidental push by PW 1 Mahendra Manmothe to one of the accused persons. Allegation is that the accused and co-accused attempted to commit the murder of PW 2. The evidence of Mahendra Kamble shows that after the incident he became unconscious on the spot itself. What is material is the intention. Prima facie, if really accused persons intended to commit the death of PW 2 Mahendra Kamble then nothing prevented them from prosecuting further assault on the victim whose leg was fractured. So far as present accused is concerned, the main act of hitting the injured with stones is not attributed to him. A short sentence is imposed on the

Applicant/Accused. Disposal of the Appeal will take its own time. The sentence imposed on the Applicant is suspended and he be released on bail on his furnishing P.R. bond of Rs.15,000/- in the like amount.

(A.M.BADAR, J)

Rng

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