

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.131 OF 2017

IN

CRIMINAL APPEAL NO.75 OF 2017

MANGESH GULABRAO BORADE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.R.V.Bansode, Advocate for the Applicant.

Ms.A.A.Talekar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 3rd FEBRUARY 2017

P.C. :

1 This is an application for suspension of sentence and releasing the applicant / accused on bail 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 Section 34 of the IPC and is sentenced to

suffer rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for 1 month.

2 Heard learned advocate appearing for the applicant / accused. He argued that even if the evidence of the prosecution witnesses is accepted, then also an offence punishable under Section 307 of the IPC 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 PW9 Dr.Rajendra Dattatraya Dusane.

3 The learned APP opposed the 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 for giving rise to the incident is accidental push by PW1 Mahendra Manmothe to one of the accused persons. Allegation is that the accused and co-accused attempted to commit murder of PW2 Mahendra Kamble. 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 PW2 Mahendra Kamble, then nothing prevented them from prosecuting further assault on the victim whose leg was fractured. So far as present applicant / 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. Hence the order :

- i) The application is allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and he is directed to be released on bail on executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

(A. M. BADAR, J.)