

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 414 OF 2017
IN
CRIMINAL APPEAL NO. 240 OF 2017**

Wasim Fakruddin Shaikh .. Applicant

v/s.

The State of Maharashtra ..Respondent

Mr. Vikas Shivarkar for the Applicant .
Mr. Rajan Salvi APP for the Respondent State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 22nd AUGUST, 2017.**

P.C.

1. The applicant herein was the accused in Sessions Case No.555 of 2009 pending on the file of Addl. Sessions Judge, Pune. By this application the applicant has sought suspension of execution of sentence imposed vide judgment dated 28th February, 2017 and for release on bail.

2. Heard Mr. Shivarkar, the learned Counsel for the applicant and

Mr. Salvi, the learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

3. The applicant herein was charged for attempting to murder Shri Nandlal Vithal Naik. The learned Trial Judge, after considering the evidence on record has held the applicant guilty of the offence punishable under Section 307 of Indian Penal Code and sentenced him to undergo Rigorous Imprisonment for seven years and to pay fine of Rs.5000/- in default to undergo imprisonment for three months. The applicant is also convicted for offence punishable under Section 135(1) of the Bombay Police Act and sentenced to undergo Rigorous Imprisonment for six months and fine of Rs.1000/- in default to suffer further imprisonment for one month.

4. The learned Counsel for the applicant submits that the applicant has already deposited the fine amount. He has submitted that the applicant is in custody since 28th February, 2017. The learned Counsel for the applicant further submits that the evidence

on record does not prima facie prove the charges leveled against the applicant.

5. It may be mentioned that the evidence of PW1-Nandlal Vithal Naik, reveals that the applicant had assaulted him by means of a sword and that he had sustained injuries on his left eye-brow and on his nose. He had further stated that when the applicant tried to raise the sword to hit him on his head, he avoided the blow by raising his left hand and in the process he sustained injuries on his left hand.

6. The evidence of PW9 Dr. Dhananjay Raut vis-a-vis the injury certificate at Exhibit 36 reveals that the injuries sustained by PW1 were simple in nature. The nature of the injuries prima facie indicate that the blows of sword allegedly inflicted by the applicant were not forceful. Thus the evidence on record does not prima facie indicate that the applicant had intention of causing death of PW1 Nandlal.

7. The applicant was on bail during pendency of the trial. There is nothing to indicate that he had violated the conditions of bail.

Considering this fact, as well as considering the nature of the evidence, in my considered view, this is a fit case for suspending the execution of sentence and release of the applicant on bail pending the final hearing of the appeal. Hence the order.

- i) The application is allowed.
- ii) The execution of sentence imposed by the learned Sessions Judge, Pune vide judgment dated 28th February, 2017 in Sessions Case No. 555 of 2009 is suspended till disposal of the appeal on merits.
- iii) The applicant is ordered to be released on bail, on the applicant furnishing bail bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned Sessions Judge, Pune.
- iv) The applicant shall furnish his contact number and local as well as permanent address, if any, to the Investigating Officer as well as in the fresh bail bonds.

(ANUJA PRABHUDESSAI, J.)