

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1148 OF 2016
IN
CRIMINAL APPEAL NO.624 OF 2016**

Mr. Bala Bhagwan Tokade)...Applicant

V/s.
State OF Maharashtra)...Respondent

Mr. R.N.Gite, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 11th JANUARY 2017.

P.C. :

This is an application for suspension of sentence and releasing the applicant-accused on bail during the pendency of the instant appeal. The applicant-accused is convicted of the offence punishable under Section 307 of IPC and is sentenced to suffer RI for ten years and to pay fine of Rs.2,000/- in default to undergo SI for two months.

2 Heard learned counsel appearing for the applicant-accused. He argued that applicant-accused was on bail during the

trial and he had not misused his liberty. It is further argued that applicant-accused is not a criminal. He was resident of the village where the work was going on. He was aggrieved by the act of employees of the contractor in digging his water supply pipe. Incident in question will have to be considered from this angle. Learned counsel further argued that nature of injuries reflects intention and considering the end result, it cannot be said that applicant-accused had attempted to commit murder of the injured.

3 The learned APP opposed the application by arguing that weapon of offence was sword and blows were landed on hands of the victim as the victim was successful in avoiding successive blows.

4 With the assistance of the parties, I have carefully perused the evidence adduced by the witnesses so also impugned judgment and order. Even according to the prosecution case as reflected from the version of the injured victim, work of digging was going on in Ghoti Village and in that process, pipe of tap water connection to the residents of the applicant-accused was broken by the workers of the contractor. Then there were

altercations between the victim and the applicant-accused. As seen from the evidence of the victim, accused was holding sword. However, injuries on the victim were on his hands. Section 307 of the IPC requires intention coupled with overt act. With weapon like sword, injuries caused were on hands of the victim. In this factual background, one will have to consider whether offence can travel to Section 307 of IPC.

5 In the light of forgoing discussion, I am of the considered opinion that the applicant-accused who was on bail during the pendency of the trial deserves liberty. Hence, the following order:

- (1) Application is allowed.
- (2) Substantive Sentence of imprisonment imposed upon the applicant-accused is suspended and the applicant-accused be released on bail on executing PR bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

6 Application stands disposed of accordingly.

(A. M. BADAR, J.)