

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1263 OF 2016
IN
CRIMINAL APPEAL NO.677 OF 2016**

Arvind @ Arun Mohan Devadiga)...Applicant

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

Ms. Anjali Patil, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 16th JANUARY 2017.

P.C. :

This is an application for suspension of sentence and releasing the applicant/accused on bail during the pendency of the appeal. Applicant-accused has been convicted of the offences punishable under Section 307 of the IPC and he is sentenced to suffer RI for 7 years and to pay a fine of Rs.2,000/- in default to undergo further RI for six months. Appeal is already admitted for final hearing.

2 Heard the learned counsel for the applicant-accused at

sufficient length of time. By taking me through the entire evidence adduced by the prosecution, learned counsel argued that evidence of injured P.W.1 Vipul Mandal and that of P.W.2 Laxmi Koli, who is claiming to be eye witness has come on record by way of omission. The learned counsel further argued that P.W.3 Khaja is not reliable witness as though available right from the date of alleged incident, he approached the police on 19.2.2015. The learned counsel further argued that all these three witnesses are giving different place of occurrence. It is further argued that evidence of medical officer shows that there was only one injury on the victim. The learned counsel further pointed out cause of alleged assault as well as evidence of P.W.4 Nigamma to demonstrate that FIR was lodged after due deliberations by adding embellishment.

3 As against this, according to the learned APP, FIR itself shows that assault was at the chest of the victim and C.A.Report also shows that blood was found on the weapon of offence. The learned APP further argued that assault was on the vital part of the body by means of sharp aged weapon. Therefore, applicant-

accused cannot released on bail.

4 The learned APP further argued that the applicant is having criminal antecedents and several offences were registered against him. To this, the learned counsel for the applicant-accused submitted that the applicant-accused has been acquitted in all cases and not a single criminal case is pending against him.

5 I have carefully considered rival submissions and also perused the impugned judgment and order as well as deposition of witnesses.

6 Applicant-accused is convicted of the offence punishable under Section 307 of IPC. It is well settled that for convicting accused for the offence punishable under Section 307 of IPC, it is not necessary that injury capable of causing death is required to be proved. What is material is intention coupled with overt act. It is required to be shown that if attempt succeed then the accused becomes guilty of the offence punishable under Section 302 of the IPC.

7 In the case in hand, the cause of assault has come on record from the evidence of injured P.W.1 Vipul Mandal. The

applicant-accused was having liking towards P.W.4 Nigamma and, therefore, he used to visit area of her residence frequently. P.W.1 Vipul was also visiting the house of P.W.4-Nigamma. Evidence of P.W.4-Nigamma shows that after incident in question, there were due deliberations and discussions amongst prosecution witnesses and then the report came to be lodged. It thus, appears that one side love of the applicant-accused with P.W.4-Nigamma has become cause of the incident in question.

8 Now let us prima-facie examine intention of the applicant-accused in assaulting P.W.1-Vipul Mandal. The applicant-accused was having sickle in his hand. P.W.1-Vipul Mandal has stated in his evidence that applicant-accused abused him, took out sickle and gave blow thereof to the left side of his chest. Associates of P.W.1-Vipul Mandal flee from the spot but the applicant-accused, as per version of P.W.1-Vipul Mandal remained on the spot waiving sickle in the air in threatening gesture. Thus, evidence of P.W.1-Vipul Mandal itself shows that ample opportunity was available with the applicant-accused to give successive blows of the sickle to the injured Vipul but the applicant-accused had not given any

other blow to the victim. If viewed from this angle, it becomes clear that if the applicant-accused really intended to commit murder of PW.1-Vipul Mandal then nothing prevented him from giving successive blows of sickle to the injured victim. This was not done by the applicant-accused. In the light of this aspect, at the time of final hearing of the appeal, one will have to further examine the intention harboured by the applicant-accused in giving single blow of the sickle to the victim, who was very much available for further blows to the applicant-accused.

9 In this view of the matter, considering the circumstances in which crime in question took place, degree of criminality shown by the applicant-accused during the incident and the quantum of sentence imposed upon him by the learned trial Court, applicant-accused deserves liberty and, therefore, order:

- (1) Application is allowed.
- (2) Substantive sentence of imprisonment imposed on the applicant-accused is suspended and he is directed to be released on bail on

executing PR Bond in the sum of Rs.15,000/-
and on furnishing surety in the like amount.

- (3) As condition of this order, applicant-accused should not commit any crime in future and he should not contact P.W.1-Vipul Mandal, P.W.4-Nigamma and other witnesses of the prosecution during the pendency of the present appeal.

10 Application stands disposed of.

(A. M. BADAR, J.)