IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1322 OF 2016
IN
CRIMINAL APPEAL NO.819 OF 2016

Shri Mayur Gajanan Kadav)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr. Sanjeev P. Kadam, Advocate for the Applicant.

Mr. Pawan Mali, Advocate for Org. Complainant.

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

CORAM : A. M. BADAR, J.

DATE : 5th JANUARY 2017.

P.C. :

This is an application by original accused no.3-Mayur Gajanan Kadav for suspension of sentence and releasing him on bail during the pendency of the instant appeal. Applicant-accused is convicted of the offence punishable under Section 304(II) of the IPC and is sentenced to suffer RI for 7 years and to pay fine of Rs.1,000/- in default to undergo further RI for six months.

2 I have heard learned counsel for the applicant-accused . He argued that perusal of evidence of the prosecution goes to show that sharp side of axe was not used for the assault. By drawing my attention to the evidence of PW-4 Dr. Jyotsna Sunil Sawant, the learned counsel submitted that injury attributable to the applicant-accused is contused lacerated wound on mid parietal region size 2 cm X 0.2 cm and the Doctor has deposed that this is simple injury caused by the blunt and heavy object. Therefore, in submission of the learned counsel for the applicant-accused considering the nature of offence and short sentence imposed upon the applicant-accused as well as the fact that he has undergone sentence of more than two years, he is entitled for bail.

3 As against this, learned counsel appearing for the complainant , son of the deceased has argued that the applicant has misused his liberty as vide order dated 21.2.2013 passed by this Court in Bail Application No.2012 of 2012, the applicant-accused was directed to report to M.Phule Police Station on every Sunday till disposal of the case against him. However, he failed to

attend the concerned police station after commencement of trial. The learned counsel further argued that offence alleged against the applicant is serious and he has caused death of Tukaram Arjun Tamhane by using axe as a weapon of assault.

4 The learned APP opposed the application by submitting that guilt of the applicant-accused is seen from the evidence of P.Ws.3,4,5,8 and 9.

5 I have carefully considered rival submissions. Incident in question appears to have taken place because of some dispute in respect of the land. There were proceedings before the Revenue Authorities. The incident has resulted in registration of counter case against the prosecuting party also. In the wake of this factual background, the trial Court appreciated evidence on record and held that there was free fight between both the parties at the time of incident in which because of total deprivation of self control, applicant-accused assaulted the deceased by giving single blow to him by means of axe. With such reasoning, learned Trial Court has

held that the case is covered by Section 300 of the IPC. Accordingly, applicant-accused is convicted and sentenced to suffer RI for 7 years for the offence punishable under Section 304(II) of the IPC. He is behind bar from 15.6.2011 till he is released on bail by this Court on 21.2.2013. Considering the nature of evidence against the applicant-accused and the short sentence imposed on him as well as the fact that there is no likelihood of disposal of the appeal in near future, I am of the considered opinion that the applicant who was on bail during the pendency of the trial needs to be enlarged on bail. True it is that the applicant-accused had not duly complied with the order dated 21.2.2013 passed by this Court releasing him on bail by attending the concerned police station on every Sunday but during the pendency of the trial, no action whatsoever was initiated against the applicant-accused for this alleged breach. Hence, his non-attending the police station during the pendency of the trial cannot be given over bearing importance to curtail his liberty during the pendency of the appeal. The application is allowed. Substantive sentence of imprisonment imposed on the applicant-

accused is suspended. He be released on bail on executing PR Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

6 As a condition of this order, applicant-accused should not commit any offence during the pendency of the instant appeal.

(A. M. BADAR, J.)