

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

**CRIMINAL APPLICATION NO.1427 OF 2017
IN
CRIMINAL APPEAL NO.454 OF 2017**

Rajesh Jagannath Gosavi

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Ujwal R. Agandsurve for the Applicant.

Mr. Prashant Jadhav, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th NOVEMBER, 2017.

P.C.:-

Heard Mr. Ujwal Agandsurve, the learned counsel for the Applicant and Mr. Prashant Jadhav, learned APP for the Respondent -State.

2. By this application, the Applicant, who was accused No.5 in Sessions Case No.14 of 2015 has sought to suspend the conviction imposed by the learned Additional Sessions Judge, Ratnagiri by order dated 3rd May, 2017 for offences punishable under Sections 143, 147, 148, 326 and 395 r/w. 149 and 504 of the IPC.

3. The case of the prosecution in brief is that on 5.3.2015 the Applicant alongwith other co-accused formed an unlawful assembly armed with deadly weapons and that they assaulted on first informant Krushna Gosavi and other witnesses viz. Sunil and Neha. It was further alleged that the Applicant and the other co-accused had also intentionally insulted and criminally intimidated the first informant and his family members. The Applicant and other co-accused were also charged for committing theft of gold chain belonging to Neha.

4. Pursuant to the FIR lodged by PW1-Krushna Gosavi, crime was registered and upon completion of the investigation charge sheet was filed. The case was committed to the Court of Sessions. The learned Additional Sessions Judge, Ratnagiri, after considering the evidence on record held the Applicant and the other co-accused guilty of the aforesaid offences. The Applicant and the other co-accused have been acquitted of the offence punishable under Section 395 of the IPC. Aggrieved by the conviction and sentence, the Applicant has preferred the appeal being Criminal Appeal No.454 of 2017.

5. By order dated 6th July, 2017, the Applicant was released on bail on furnishing bail bonds of Rs.15,000/- with one or two sureties to

the like amount. By the present application the Applicant has sought suspension of conviction pending the Appeal.

6. It is not in dispute that the Court has powers to suspend the conviction. Nevertheless, such powers have to be exercised sparingly, by assigning reasons and pointing out exceptional circumstances for suspending or staying the conviction. In the instant case the Applicant has been held guilty of offence under Section 326 of the IPC with the aid of Section 149 of the IPC. In this regard the evidence of the first informant prima facie reveals that the Applicant and the first informant are related to each other and residing in the same house. There is civil dispute between the first informant and the Applicant herein. The records reveal that the first informant had undertaken construction of house. The Applicant and others had gone to the place of the incident i.e. the courtyard to question the first informant about construction of the said house. The altercation over the said issue resulted in the incident in question.

7. The evidence on record does not prima facie indicate that this Applicant was involved in assaulting the first informant, who had allegedly sustained grievous injuries. The role specifically attributed to

the Applicant is of the assault on PW3 and PW5. The evidence on record prima facie indicates that both these witnesses had sustained simple injuries. Thus, the material on record does not prima facie indicate that the Applicant had gone to the place of the incident with an intention of assaulting PW1 or that he was involved in inflicting any serious injuries on the first informant or the witnesses.

8. It is to be noted that the Applicant herein is a Teacher in a Zilla Parishad School at Lanja. It is stated that in view of the pendency of the Appeal, the Applicant has been receiving only 75% of salary. The Appeal is of the year 2017. Considering the large pendency of the cases, the Appeal is not likely to come up for hearing in the next couple of years. The delay in disposal of the appeal will therefore cause severe monetary loss to the Applicant.

9. Considering all the above facts, in my considered view this is a fit case for staying the conviction pending the Appeal. Hence, application is allowed in terms of prayer clause (a).

10. The Application stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)