

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

CRIMINAL APPLICATION NO. 1601 OF 2017
IN
CRIMINAL APPEAL NO. 892 OF 2017

Sarfaraz Ahmed Haji Abubsar Shaikh
& Ors.

..Applicants/ Appellants

v/s.

The State of Maharashtra

..Respondents

Mr. Ganesh K. Gole for the Applicant.

Mr. Prashant Jadhav APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 29, 2017.**

P.C.

1. The applicants herein who were accused nos.2, 5 and 6 in Sessions Case No. 375 of 2006, on the file of the Addl. Sessions Judge No.2, Thane. By judgment dated 27th September, 2017, the applicants have been held guilty of the offences under Section 147, 148, 304(ii) r/w. 149 of the Indian Penal Code. They have been sentenced to undergo maximum imprisonment of three years and total fine of Rs.1700/-. By this application, the applicants have sought suspension of execution of sentence and to release them on bail.

2. Heard the learned Counsel for the applicants and the learned APP for the State. Perused the records.

3. The applicants herein were prosecuted for committing murder of Mohan Jagtap. Upon considering the evidence adduced by the prosecution, particularly the nature of the injuries and the weapons used in the crime, the learned Addl. Sessions Judge-2, Thane has held that the offence does not come within the purview of Section 302 of IPC and held the applicants guilty for the offence under Section 304(II) of IPC and sentenced them to undergo imprisonment of three years.

4. The sentence is of short term imprisonment of three years. The appeal is of the year 2017 and is not likely to come up for final hearing in the next couple of years due to large pendency of old cases. Hence, rejection of application will result in the applicants undergoing the sentence of imprisonment even before the appeal is heard on merits. The applicants were on bail during pendency of the trial. It is not in dispute that the applicants have not violated the terms of bail bond during the period when they were released on bail.

5. Considering the above factors, and also considering the nature of the allegations and the evidence in support thereof, in my considered view, this is a fit case for suspending the execution of sentence and releasing the applicants 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 Addl. Sessions Judge No.2, Thane, in Sessions Case No. 375 of 2006 is suspended till the final disposal of the appeal on merits, subject to the applicants furnishing fresh bail bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) each with one or two solvent sureties in the like amount to the satisfaction of the learned Addl. Sessions Judge No.2, Thane.
- (iii) The applicants shall furnish thier contact number and their permanent as well as local address, if any, to the Investigating Officer as well as in the fresh bail bonds.

(ANUJA PRABHUDESSAI, J.)