

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION [APPA] NO.7 OF 2017

IN

CRIMINAL APPEAL NO.60 OF 2016

[Chandrashekhar s/o Vasudeorao Yengandhalwar .vs. State of Maharashtra]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.G. Karmarkar, Advocate for applicant-appellant,
Shri I.J. Damle, APP for non-applicant-State.

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CORAM : KUM. INDIRA JAIN, J.

DATED : MARCH 27, 2017.

Heard Shri Karmarkar, learned counsel for applicant-appellant and Shri Damle, learned Additional Public Prosecutor for non-applicant-State.

This is an application under Section 389 of the Code of Criminal Procedure for suspension of sentence. Applicant was prosecuted for the offence punishable under Section 302 of the Indian Penal Code. On trial, learned Ad-hoc Additional Sessions Judge, Chandrapur found the accused-applicant guilty of the offence punishable under Section 304-II of the Indian Penal Code and sentenced him to undergo Rigorous Imprisonment for 10 years with fine of Rs.1,000/- in-default to suffer Simple Imprisonment for 15 days. Applicant has assailed the judgment and order of conviction in appeal. Record shows that he is in jail since 5.5.2013.

Prosecution case is based on the evidence of two star witnesses, PW-2 Manisha and PW-3 Sanjay. It appears from the evidence of Manisha that on 4.5.2013

altercation had taken place between deceased Narayan and the accused, as a board of Beauty Parlour was affixed by Narayan. She states that accused struck the head of Narayan 5-6 times on cement road and gave fist blows on his head and near eye. The facts elicited in cross-examination of Manisha would reveal that in her statements under Sections 161 and 164 of the Code of Criminal Procedure, she did not inform the police or the learned Magistrate that accused struck the head of deceased 5-6 times on cement road. So far as PW-3 Sanjay is concerned, his evidence does not appear to be consistent with the medical evidence. PW-9 Dr. Amit Jaiswal had examined the deceased at the time of conducting postmortem and noticed multiple injuries. Only one internal injury appears to be fatal.

In these circumstances and considering the period undergone by the applicant, this court is inclined to suspend the substantive sentence of imprisonment and release the applicant on bail. Hence, the following order :

- (i) Criminal Application No.7/2017 is allowed.
- (ii) Pending appeal substantive sentence of imprisonment is suspended on applicant's furnishing Personal Bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the trial court.
- (iii) Applicant to furnish his address proof and shall make himself available as and when required.

JUDGE