

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

CRIMINAL APPLICATION (APPA) NO. 434 OF 2017

IN

CRIMINAL APPEAL NO.262 OF 2017

(Rupesh S/o Bolan Gurnule and others..vs.. The State of Maharashtra, through PSO.PS.
Gondpipri,District-Chandrapur.)

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

Court's or Judge's orders.

Shri A.D.Hazare, Advocate for applicant.

Shri R.S.Nayak, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 4, 2017

This is an application for suspension of jail
sentence and for grant of bail.

This Court on 28/6/2017 admitted the present
appeal which questions the conviction and sentence passed by
learned Sessions Judge, Chandrapur in S.T.No.160/2011 for
the offence punishable under Section 304-Part(I) r/w Section
149 of the Indian Penal Code and sentenced to suffer R.I. for
10 years and to pay fine of Rs. 500/- and in default of
payment of fine, further to suffer R.I. for two months. He is
also convicted for the offence punishable under Section 143 of
the Indian Penal Code and sentence to suffer R.I. for six
months. He is further convicted for the offence punishable
under Section 147 of the Indian Penal Code and sentenced to
suffer R.I. for one year.

The record and proceedings were called on the last
date for consideration of the application for bail. The record
and proceedings are received.

With the help of learned A.P.P. I have perused the case papers.

The F.I.R. is lodged by Kalpana Kishor Kokode (PW1) widow of Kishor Kokode. The incident is dated 28/7/2011, however the F.I.R. is lodged on the next day. But the evidence of Kalpana(PW1) shows that she has given plausible explanation for lodging the F.I.R. on the next day. Therefore, on that count it cannot be said stated applicants are falsely implicated in the crime.

What is important to consider at this stage is the conviction imposed upon the applicant under Sections 304-I of the Indian Penal Code . Therefore, it was obligatory on the part of the prosecution to prove that there was an intention on the part of the present applicant to commit the murder of deceased Kishor.

From the F.I.R. it is clear that Ku.Komal Kishor Kokode(PW6) daughter of deceased came firstly to her house and informed that there is dispute going on in between accused no.1 Suresh Baburao Choudhari and the deceased therefore, first informant went to the site of the dispute and they came back. Therefore, it is clear that at that particular time the present applicants were not present on the spot.

Subsequent to the first incident after 10-15 minutes deceased again went to paan shop and that time according to first informant again dispute arose and the present applicants in that dispute bodily lifted the deceased and he was thrown on the ground resulted into head injury to which he succumbed. From the aforesaid nature of the evidence it is crystal clear that the incident has occurred in the spur of

moment and there was no prima facie intention on the part of the applicants.

The applicants were on bail during the course of trial and at no point of time they have misused the liberty granted to them. In that view of the matter and in that view of the nature of the evidence I am of the view that applicants should be released on bail since it will not be possible for this Court to hear the final hearing of the appeal in the near future. Hence, the order.

ORDER

- I) The application is allowed.
- II) The substantive jail sentence passed by learned Sessions Judge, Chandrapur in S.T.No.160/2011 stands suspended during the pendency of the present appeal.
- III) The applicants-appellants be released on bail on their executing P.R. of Rs. 10000/- by each of them with one solvent surety each in the like amount.
- IV) The learned Court below before whom bail bonds will be executed to ensure that entire fine amount is paid by the applicants before executing of the bail bonds and before their release on bail.
- V) The applicants shall remain present personally before this Court at the time of final hearing.
- VI) With this the application is disposed of.

JUDGE