

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

CRIMINAL APPLICATION [APPA] NO.547 OF 2017

IN

CRIMINAL APPEAL NO.327 OF 2017

[Sheikh Sabir Sheikh Nizam .vs. The State of Maharashtra, through Police Station Officer,
Police Station, Ner, Tahsil-Ner, District-Yavatmal]

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

Court's or Judge's orders

CORAM : KUM. INDIRA JAIN, J.

DATED : OCTOBER 12, 2017.

Heard Shri N.A. Badar, learned counsel for applicant-accused no.1 and Shri Shyam Bissa, learned APP for respondent-State.

By this application, accused no.1 is seeking suspension of substantive sentence of imprisonment awarded by the learned Sessions Judge, Yavatmal, vide judgment and order dated 20.5.2017 in Sessions Case No.37/2016.

Applicant along with accused no.2 was prosecuted for the offences punishable under sections 302, 323 read with 34 of the Indian Penal Code.

The trial court, on conclusion of trial found that offence under section 302 of the Indian Penal Code is not proved, but act of accused as proved would fall under section 304 Part-I of the Indian Penal Code. Accordingly, applicant came to be convicted and sentenced to suffer rigorous imprisonment of seven years with fine of Rs.10,000/- in-default rigorous imprisonment for six months.

The learned counsel for applicant submits

that applicant is behind bars since two years and considering the substantial period of sentence which he has served, applicant be released on bail. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in **Kamal .vs. State of Haryana [(2004) 13 SCC 526]** in support of the submission.

Per contra, learned APP strongly resisted the application and submits that *modus operandi* of accused, as discussed in the judgment by the trial court, would indicate the intention to commit murder and as accused was not on bail during trial, this would not be appropriate case to suspend the sentence of imprisonment.

As the major offence punishable under section 302 of the Indian Penal Code is not proved against the applicant and as he has served the substantial period of sentence for about two years, this court, in view of the judgment of Hon'ble Supreme Court referred by the learned counsel for applicant, is inclined to allow the application. Hence, the following order :

O R D E R

- (i) The substantive sentence of imprisonment is suspended during pendency of appeal on applicant/accused no.1 furnishing PB & SB of Rs.25,000/- each to the satisfaction of the trial court.
- (ii) Criminal Application No.547/2017 is allowed in the above terms.

JUDGE