

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

CRIMINAL APPLICATION [APPA] NO.834 OF 2017

IN

CRIMINAL APPEAL NO.492 OF 2017

[Ramhari s/o Natthu Kshirsagar .vs. The State of Maharashtra, through Police Station
Officer, Police Station, Pauni, Tahsil-Pauni, District-Bhandara]

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.B. Kalwaghe, learned counsel for applicant-appellant and Smt. Shamsi Haider, learned APP for respondent.

By this application, applicant-accused seeks suspension of substantive sentence of imprisonment passed by the learned Additional Sessions Judge, Bhandara, vide judgment and order dated 24.8.2017 in Sessions Trial No.13/2013. Accused has been convicted of the offence punishable under section 307 of the Indian Penal Code and sentenced to rigorous imprisonment for seven years with fine of Rs.10,000/- in-default rigorous imprisonment for six months.

The learned counsel for applicant submits that applicant was on bail during trial. It is submitted that judgment was delivered on 24.8.2017 and on the same day, the learned Additional Sessions Judge framed charge vide Exh.63-A. The learned counsel has placed certified copy of charge on record. The same is marked as

'X' for identification.

The learned APP, upon instructions, submits that charge was altered on the day of delivering of judgment, as an error has occurred in the charge framed on previous date and section 34 of the Indian Penal Code was inadvertently added. The learned APP submits that by altering the charge, the court has only deleted section 34 from the charge and there was no question of giving opportunity to accused as alternation was not substantial in nature.

As it is apparent from Exh.63-A that charge was framed on the date of judgment and no opportunity was given to the parties, this court, without going into the merits of the case, is inclined to suspend the substantive sentence of imprisonment and proceed to pass the following order :

ORDER

(i) The execution of substantive sentence of imprisonment is suspended during pendency of appeal on applicant's furnishing PB & SB of Rs.10,000/- each to the satisfaction of the trial court.

(ii) Criminal Application No.834/2017 is allowed in the above terms.

JUDGE