

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1194 OF 2017

IN

CRIMINAL APPEAL NO.718 OF 2017

Mr.Nitin Yashwant Pawar ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Dr.Abhinav Chandrachud with Ms.Savitri Pandey with
Mr.Premkumar R. Pandey i/b. Premkumar R. Pandey, Advocate
for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 8th FEBRUARY 2018.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him.

2 The applicant/accused was charged for the offences punishable under Sections 302, 504 and 506 of the Indian Penal Code and ultimately, by the impugned Judgment and Order he came to be convicted for the offence punishable under Section 304 Part II of the Indian Penal Code and is sentenced to suffer rigorous

imprisonment for seven years apart from direction to pay fine of Rs.5000/-.

3 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to both officially recorded dying declarations by deceased Harischandra Chavan and by relying on Judgment of the Honourable Apex Court in the matter of *Laxman v. State of Maharashtra* reported in (2002)6 Supreme Court Cases 710 as well as *Kanchy Komuramma v. State of A.P.* reported in 1995 Supp. (4) Supreme Court Cases 118, it is argued that the officials, who recorded both these dying declarations, have not satisfied themselves as to fitness of the declarant for making the statement. It is further argued that the evidence of both these witness goes to show that they satisfied themselves regarding fitness of the declarant on the basis of information given by the Medical Officer to them and the said Medical Officer is not examined by the prosecution in order to prove fitness of the declarant to give the dying declarations. The learned Advocate further argued that short sentence of imprisonment is imposed on the applicant, who was on bail and he had not misused his liberty while on bail.

4 The learned Additional Public Prosecutor opposed the application by contending that apart from officially recorded dying declarations, there is evidence of oral dying declaration coming

from the mouth of P.W.No.13 Madhu Shinde, who had immediately heard narration of the deceased in respect of cause of his death. The learned Additional Public Prosecutor further argued that at the instance of the applicant/accused a knife came to be recovered and his clothes were also recovered during the course of investigation. The chemical analysis thereof as seen from the report of the Chemical Analyzer shows human blood on them. Hence, according to the learned Additional Public Prosecutor, no case for grant of bail is made.

5 Though the applicant/accused was charged for the offence punishable under Section 302 of the IPC, he is convicted for the offence punishable under Section 304 Part II of the IPC and short sentence of imprisonment for seven years is imposed on him. Though this Court made query, the learned Additional Public Prosecutor has candidly stated that the State has decided not to challenge the impugned Judgment and Order and resultant sentence.

6 The primary evidence against the present applicant/accused is that of two officially recorded dying declarations of deceased Harischandra Chavan, one by P.W.No.1 Sandesh Chavan, Police Naik and the another by P.W.No.4 Mohan Sawant, Executive Magistrate. Both these witnesses in the chief-examination itself have stated that on the basis of information

given by the Doctor, they considered the declarant to be fit for giving statement. Evidence of both these witnesses is not reflecting any material to conclude that they had put some preliminary questions to the declarant in order to ascertain his fitness for giving statement.

7 According to the prosecution case, there were many eye witnesses to the incident in question. The prosecution has examined some of them namely P.W.No.5 Rajendra Majgaonkar, P.W.No.6 Prashant Borkar and P.W.No.9 Dhondiba Khetri. However, all these witnesses have not supported the prosecution case, so far as the incident of actual assault is concerned.

8 The other evidence pointed out by the learned Additional Public Prosecutor is corroborative in nature.

9 Considering the fact that short sentence of imprisonment imposed on the applicant/accused, who was on bail during trial and there is no material to infer that the applicant/accused had misused his liberty while on bail, I seen no reason to refuse bail to the applicant/accused. Therefore, the Order :

(i) The application is allowed.

- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should not contact family members of the deceased in any manner during pendency of the appeal.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)