

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1599 OF 2017
IN
CRIMINAL APPEAL NO.114 OF 2018**

Shri.Anil Arjun Mane ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Shivraj R. Patil, Advocate for the Applicant.

Mr.V.V.Gangurde, 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 is convicted of the offence punishable under Section 304 Part II of the IPC and he sentenced to suffer rigorous imprisonment for five years imprisonment for five years apart from payment of fine of Rs.3000/- and default sentence of six months.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the applicant is behind bar right from the year 2015 and short sentence of imprisonment for five years is imposed on him. He has already undergone more than half of the substantive sentence as an under-trial prisoner. It is further argued that the offence ultimately held to be proved against him is under Section 304 Part II of the IPC and, therefore, as the applicant has undergone more than half of the substantive sentence, the applicant/accused is entitled to be released on bail.

4 The learned Additional Public Prosecutor opposed the application by contending that the offence alleged is proved against the applicant/accused and he has used sharp side of an axe for giving a blow thereof on the head of the victim.

5 I have carefully considered the rival submissions and also perused the impugned Judgment and Order and resultant sentence as well as copies of depositions of prosecution witnesses.

6 Though the applicant/accused was charged for the offence punishable under Sections 302, 323 and 504 of the IPC, he is acquitted of those offences and is convicted for the offence punishable under Section 304 Part II of the IPC. He is sentenced to suffer rigorous imprisonment for five years. The applicant/accused is in jail from 04/02/2015 and this makes it

clear that he has undergone actual sentence of more than three years out of five years imposed on him. The appeal filed by the applicant/accused may not be heard within the remaining period of two years considering the large number of pendency of jail appeals before this Court. It is seen that the State has not challenged the impugned Judgment and Order, so far as it relates to acquittal of the applicant/accused for offences punishable under Sections 302, 323 and 504 of the IPC. 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 repeat commission of any offence in future and breach of this condition shall entail the prosecution to apply for cancellation of his bail. The applicant should not commit any offence relating to his wife.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)