

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 418 OF 2018****IN****CRIMINAL APPEAL NO. 37 OF 2018**

Shakir Shakur Shaikh

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Amin Solkar i/by Misbaah Solkar for the Applicant.

Mr. Y.Y. Dabke, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 4th MAY, 2018.****P.C.:-**

This is an Application for suspension of sentence and for releasing the Applicant on bail.

2 The Applicant is convicted for an offence punishable under Section 307 read with Section 326 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default of payment to further undergo rigorous imprisonment for three months by the learned Additional Sessions Judge, Kalyan, in Sessions Case No. 56 of 2016, by its Judgment and Order dated 21st December, 2017.

3 Mr. Solkar, the learned counsel for the Applicant submitted that, there is an error apparent on face of record. That the Trial Court has convicted the Applicant under Section 307 read with Section 326 of the Indian Penal Code, which is not permissible under the law. He submitted that, the Trial Court ought to have convicted the Applicant either under Section 307 or Section 326 of the Indian Penal Code and ought not have convicted him under both the Sections, for one single incident involving one injured person and therefore it is an error on the part of the Trial Court.

 He submitted that, the Applicant has already deposited the fine amount in the Registry of the Trial Court. He further submitted that, the Applicant as on today has undergone about 30 months of actual imprisonment out of seven years of sentence imposed upon him. He, therefore, prayed that the Applicant may be released on bail.

4 A perusal of record would indicate that the Medical Officer (PW No.3) in his cross-examination has admitted that the injuries received by the injured were simple in nature. He has further admitted that he has not mentioned the depth of the injuries in his report.

 In view of the above and in view of the fact that the

possibility of hearing of Appeal on merits in the near future is remote, I am inclined to suspend the sentence and release the Applicant on bail. Hence the following order-

- a) During the pendency of the Appeal, the substantive sentence imposed upon the Applicant is suspended and the Applicant is released on bail in Sessions Case No. 56 of 2016, on his furnishing PR bond of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two solvent local sureties in the like amount.
- b) During the pendency of the Appeal, the Applicant shall attend and mark his presence before the Trial Court on every first Monday of the month between 11.00 a.m. to 2.00 p.m.. If the said first Monday is a Court holiday/Public holiday, the Applicant shall mark his presence on the immediate next day.

5 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)