

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.566 OF 2018

IN

CRIMINAL APPEAL NO.406 OF 2018

Mr.Mohan Kisan Mhetre ... **Applicant**
V/s.

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

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Mr.Vikas B. Shivarkar, Advocate for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 12th JUNE 2018.

P.C. :

1 This an application for suspension of sentence and releasing the applicant during pendency of appeal filed by him.

2 The applicant is convicted of the offence punishable under Section 304 Part II of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.5,000/- and default sentence of one years.

3 Heard the learned Advocate appearing for the

applicant/accused as well as the learned Additional Public Prosecutor for the respondent/State.

4 The learned Additional Public Prosecutor argued that there are eye witnesses to the incident in question and their evidence is supported by the evidence of P.W.No.6 Dr.Vinod Kedari, who performed postmortem examination on the dead body.

5 I have carefully considered the rival submission and also perused evidence adduced by the prosecution so also the impugned Judgment and Order of conviction and resultant sentence.

6 The incident in question resulted in death of Gajanan Bankar on 28/05/2010 while taking treatment at the Sassoon Hospital, Pune. According to the prosecution case at 6.30 p.m. of 24/05/2010, the present applicant abused Gajanan Bankar (since deceased) over the issue of digging well in the field and then gave single blow of stick on head of Gajanan causing bleeding injury.

7 Perusal of medical papers of the deceased shows that during the course of medical treatment he has suffered cardiac arrest. P.W.No.6 Dr.Kedari had performed autopsy on the dead body and concluded that the death was due to head injury. The

case is that of a single blow of stick on a head of the deceased. Cross-examination of P.W.No.1 Sagar, who happens to be a eye witness and son of Gajanan goes to show that there was no dispute or strained relations between the deceased and the accused. Accused was friend of the deceased.

8 During pendency of the trial, the applicant was on bail and he had not misused his liberty.

9 The question which would fall for consideration at the time of final hearing would be whether the offence is one punishable under Section 304 Part II of the Indian Penal Code or Section 326 of the said Act. Be that as it may, as the applicant is an agriculturist having no criminal antecedents and he was on bail during pendency of the trial, I proceed to pass the following Order:

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 on his executing P. R. Bond in the sum of Rs.15,000/- and on furnishing one surety in the like amount.

- (iii) As a condition of this Order, the applicant/accused shall not repeat commission of similar offence in future and shall not to contact members of the prosecuting party in any manner.

(A.M.BADAR J.)