

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1389 OF 2018

IN

CRIMINAL APPEAL NO.1005 OF 2018

Shantaram Nathu Mali ... **Applicant**

V/s.

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

.....

Mr.S.V.Marwadi, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

Mr.U.B.Bade, Police Naik, B.N.No.1537, Palghar Police Station is present.

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CORAM : A.M.BADAR J.

DATED : 27th AUGUST 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 for the offences punishable under Sections 326 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for five years apart

from payment of fine of Rs.5,000/- and in default to suffer rigorous imprisonment for six months.

3 Heard the learned Counsel appearing for the applicant/accused as well as the learned Additional Public Prosecutor.

4 The learned Additional Public Prosecutor opposed the application by contending that there is one antecedent against the applicant/accused and the applicant/accused has committed serious crime of assaulting the Head Clerk working in the office.

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

6 The applicant/accused was tried for the offence punishable under Section 307 of the Indian Penal Code. However, after due trial, the learned trial Court come to the conclusion that the prosecution has failed to prove intention of the applicant/accused to commit murder of the First Informant/P.W.No.1. Dattatraya Mhatre. For this purpose, the learned trial Court look into the evidence of injuries suffered by the P.W.No.1. Ultimately, the learned trial Court came to the

conclusion that because of fracture to sixth rib, the offence punishable under Section 307 of the Indian Penal Code is imposed on the applicant, who was on bail throughout. It is not shown that the applicant/accused has misused his liberty. Therefore, the 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 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 the First Informant in any manner and he should not repeat commission of similar offence in future.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Digitally signed
by Raju
Dattatraya
Gaikwad
Date: 2018.08.27
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Gaikwad RD