

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1721 OF 2017
IN**

CRIMINAL APPEAL NO.1045 OF 2017

Washim Akram Khan ...Appellant

Versus

The State of Maharashtra ...Respondent

Mr. Shekhar A. Ingawale for the Appellant.

Mr. V.V.Gangurde, APP for the State.

**CORAM: A.M. BADAR, J.
DATED: 8th JANUARY 2018**

PC:-

1. This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant alongwith co-accused Ramsingh Thakur are convicted for the offence punishable under Section 326 r/w 34 of the Indian Penal Code and they both are sentenced to suffer Rigorous Imprisonment for five

years apart from payment of fine of Rs.2,000/- and in default to undergo further Simple Imprisonment for 3 months.

2. Heard the learned advocate appearing for the applicant/accused. He argued that even according to the prosecution case, the applicant has also assaulted first Informant Kandaswamy Kadirwel Harijan and the injuries suffered by Kandaswamy Harijan are not serious. The learned advocate further argued that the applicant had not assaulted another injured named Virapandian R.Mogham and therefore, Section 34 of the Indian Penal Code cannot be invoked. The learned Advocate drew my attention to the evidence of PW-1 Kandaswamy Harijan and that of PW-10 Dr. Paresh Bansal to demonstrate there is discrepancies in respect of weapon i.e. Koyta. He argued that injuries suffered by PW-1 Kandaswamy Harijan are not possible by the said weapon which was not even identified by PW-1 Kandaswamy Harijan.

3. The learned APP opposed the application by contending that the doctor has deposed about suffering grievous injury by PW-2 Virapandian R. Mugam and therefore, the applicant is not entitled for bail.

4. I have carefully considered the rival submissions and also perused the copies of deposition as well as the impugned judgment and order of conviction. After acquittal of the applicant and the co-accused for the offences punishable under Sections 307, 504 r/w 34 of the Indian Penal Code they both are convicted for the offence punishable under Section 326 r/w 34 of the Indian Penal Code. Merely, on the basis of opinion expressed by PW-10 Dr. Paresh Bansal the learned Trial Court concluded that PW-2 Virapandian R. Mugam has suffered grievous injury. The injury suffered and considered as grievous hurt by the learned trial Judge is stab wound over right hypochondrium of size 2 X 1 cm. Prima facie it appears that the learned trial Judge has missed the provision of Section 320 of the Indian Penal Code in concluding the nature

of the hurt.

5. Even otherwise, the applicant was on bail during the pendency of the trial and it is not reported that he has misused his liberty. Short sentence of imprisonment is imposed on the applicant and the appeal filed by him may not be heard within that period. In this view of the matter, 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 surety in the like amount.

(A.M. BADAR, J)