

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.216/2018

IN

CRIMINAL APPEAL NO.142/2018

Dilip s/o Sahebrao Girhe

..vs..

State of Mah., Police Station Officer, Hudkeshwar Police Station, Hudkeshwar,
Nagpur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri P.P. Kotwal, Counsel for the applicant/appellant.

Shri Amit Madiwale, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : MAY 3, 2018.

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. Heard learned counsel Shri P.P. Kotwal for the applicant/appellant and learned Additional Public Prosecutor Shri Amit Madiwale for the State.
3. The applicant/appellant was convicted on 2.2.2018 by learned Additional Sessions Judge-5, Nagpur in Sessions Trial No.433/2016 for the offence punishable under Section 304-II of the Indian Penal Code and is directed to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.1000/- and, in default of payment

of the fine amount, to suffer rigorous imprisonment for 6 months.

4. This Court admitted the appeal on 26.3.2018 and the application was ordered to be considered after receipt of record and proceedings.

The record and proceedings are received.

5. In the prosecution case, there are two eyewitnesses viz. Raju Rameshrao Likhari (PW1) and Vishwas Shrirang Dupare (PW2). From their evidences, it is clear that both accused Dilip and deceased were under the influence of liquor and they were teasing with each other. They were friends. The evidence of these two witnesses shows that something went wrong after they were asked to leave place where Raju was guarding as security guard and, thereafter, Dilip has assaulted on deceased by means of crowbar.

6. The applicant/appellant was released on bail by this Court on 21.12.2017. The applicant/appellant was in jail from 9.5.2016 till 27.12.2017.

7. Looking to the pendency of the criminal appeals before this Court, it would not be possible to take final hearing of the present appeal in near future. In view of the quality of evidences and the fact that the incident has occurred on trivial issue, I am of the view that discretion can be exercised in favour of the present applicant/appellant. That leads me to pass the following order:

ORDER

(i) The criminal application is allowed.

(ii) The substantive jail sentence imposed upon the applicant/appellant on 2.2.2018 by learned Additional Sessions Judge-5, Nagpur in Sessions Trial No.433/2016 for the offence punishable under Section 304-II of the Indian Penal Code shall remain suspended during the pendency of the present appeal.

(iii) Applicant Dilip s/o Sahebrao Girhe, be released on bail on he executing a P.R. Bond in the sum of Rs.5000/- with one solvent surety of the like amount.

(iv) The applicant/appellant, at the time of final hearing of the present appeal, shall remain personally present before this Court.

(v) With this, the criminal application stands allowed and disposed of accordingly.

JUDGE

!! BRW !!

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