

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

CRIMINAL APPLICATION (APPA) NO.345/2018

IN

CRIMINAL APPEAL NO.240/2018

Ajay @ Golachha s/o Jogasingh Yadav

..vs..

State of Mah., thr. PSO Railway Police Station, Itwari, Nagpur, Tahsil and District
Nagpur

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

Court's or Judge's Order

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Shri A.R. Wagh, Counsel for the applicant/appellant.

Shri N.R. Rode, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : APRIL 12, 2018.

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. Yesterday, this matter was heard *in extenso*. After hearing learned counsel Shri A.R. Wagh for the applicant/appellant and learned Additional Public Prosecutor Shri N.R. Rode for the State, when the Court expressed its opinion that the Court is dismissing the application for bail, learned counsel for the applicant/appellant submitted that the matter be adjourned for one day for obtaining instructions from the applicant/appellant about withdrawal of the application.
3. Today, when the matter is called out, learned counsel

for the applicant/appellant submitted that the applicant/appellant wants the order on merits.

4. The applicant/appellant is accused No.1 in Sessions Case No.100/2016. He, along with co-accused, faced a Trial for the offences punishable under Sections 353, 332, 333, and 326 read with Section 34 of the Indian Penal Code and under Section 146 of the Indian Railways Act.

5. After a full dressed Trial, learned Additional Sessions Judge, Chandrapur, vide judgment and order of conviction dated 31.3.2018, convicted the accused persons for the offence punishable under Section 353 read with Section 34 of the Indian Penal Code and directed that they shall suffer rigorous imprisonment for 2 years with fine of Rs.500.

They are also convicted for the offence punishable under Section 332 read with Section 34 of the Indian Penal Code and on that count sufferance of jail sentence is 3 years and payment of fine of Rs.500 by each of them.

They are also convicted for the offence punishable under Section 333 read with Section 34 of the Indian Penal Code and directed that on this count their jail sentence shall be 5 years and fine of Rs.1000/-.

They are also convicted for the offence punishable under Section 325 read with Section 34 of the Indian Penal Code and directed that they should suffer rigorous imprisonment for 4 years

with fine of Rs.500/-.

They are also convicted for the offence punishable under Section 146 of the Indian Railway Act and on that count they were only fined to the tune of Rs.1000/- by each of them.

6. Learned counsel for the applicant/appellant submitted that the applicant/appellant was on bail during the course of the Trial and at no point of time he has misused the liberty granted to him in his favour and, therefore, the applicant/appellant be released on bail.

Merely because the applicant/appellant was on bail during the Trial, that by itself is not sufficient and cannot be the reason for suspending the substantive jail sentence for releasing the applicant/appellant on bail.

7. The prosecution case is that Durgeshkumar (PW1), is a constable in the Railway Protection Force. I have an opportunity to perused the notes of evidence, even at this stage, since the applicant/appellant has annexed copy of notes of the evidence.

8. The evidence of Durgeshkumar reveals that the incident has occurred on 20.6.2016. On the said day, he was on duty at Chanda Fort Railway Outpost. The incident occurred after 11:00 p.m.. His evidence shows that after 10:45 p.m., after departure of Gondia-Ballarsha Passenger Train, he went to his barrack. After some time, he heard noise of shouting. Therefore, he went there. He noticed that shout is coming from the Waiting Hall. He noticed

accused No.2 Kawadu was hurling abuses there. According to his evidence, accused No.2 Kawadu used to come daily to sleep in the Waiting Hall.

9. The evidence of Durgeshkumar further reveals that since the ladies were sitting in the Waiting Hall, he requested Kawadu not to give abuses and he warded him up from that place. At that time, Kawadu quipped, “eS rqEgs ns[k yqaxk tkrk gq vius nksLrksdks ykrk gq”. Thereafter, accused No.2 Kawadu went.

After some time, Kawadu came along with the present applicant. That time, Kawadu pointed out the finger to him and informed the applicant that he is that policeman. Thereafter, the present applicant took up altercations with Durgeshkumar and, thereafter, gave stick blow on his thigh and also on his left eye. His evidence shows that he was required to be in the Railway Hospital for 7-8 days.

10. Though copy of certain notes evidence is annexed, for the reasons best known to learned counsel for the applicant/appellant, the notes of evidence of the doctor are not placed on record. However, in paragraph No.27 of the impugned judgment, learned Judge of the Court below has discussed the medical evidence. That shows that Dr. Bhaskar Sonarkar (PW15) proved the documents in respect of the medical treatment of Durgeshkumar (PW1) and they are at Exhibits 115-A to 115-J. In paragraph No.27, it is observed by learned Judge of the Court below

that the C.T. Scan was done which shows that there was a fracture of nasal bone as well as fracture of left maxillary antrum and fracture of left orbit i.e. part of eye.

11. According to me, the applicant/appellant has a scant respect for law and the law enforcing agency. Further, the guilt of the applicant/appellant is proved, with the help of the cogent and consistent evidence, by the prosecution. Therefore, this case is not a fit case, in my view, wherein this Court should exercise its discretion for releasing him on bail. The applicant/appellant is in jail and the appeal itself can be taken up for final hearing by directing preparation of the Paper-Book.

12. Hence, the criminal application stands rejected and disposed of.

JUDGE

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