

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

CRIMINAL APPLICATION [APPA] NO.793 OF 2018

IN

CRIMINAL APPEAL NO.199 OF 2017

[Zakir Baksh s/o Mehboob Baksh .vs. State of Maharashtra, through Police Station Officer, Police Station, Sakkardara,
District-Nagpur]

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

Court's or Judge's orders

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Shri R.M. Patwardhan, Advocate with Shri P.K. Dhomne, Advocate for Applicant,
Mrs. M.H. Deshmukh, APP for Non-Applicant-State,
Shri H.G. Katekar, Advocate and Shri N.Z. Rizwy, Advocate for the Objectors.
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CORAM : P.N. DESHMUKH AND
MRS. SWAPNA JOSHI, JJ.

DATED : OCTOBER 03, 2018.

This application for suspension of sentence imposed upon the applicant who is convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for six months.

Learned counsel for applicant by referring to evidence of PW-1 Complainant-eyewitness has submitted that his evidence is full of doubt in view of the fact that he though claims to be an eyewitness to the incident had not disclosed of incident involving applicant to investigating officer who immediately arrived on the spot and with the assistance of the said witness drew spot panchanama. He further contended that even according to evidence of PW-1 he has witnessed the incident by hiding behind tin shed situated near the spot, however, there is no such reference of any tin shed in the spot panchanama. On the contrary, said witness has admitted to have not pointed out any such tin shed to police while drawing the spot panchanama.

Another count on which bail is sought is that according to eyewitness account, applicant has caught hold hands of deceased behind while co-accused Arif Baksh Mehboob Baksh, brother of applicant, committed assault. In spite of same, applicant did not suffer any injuries on his person as the assault is in the night time.

Another ground put forth for bail is that though according to PW-5 API Sonwane, Investigating Officer, who was on patrolling duty in the night, reached to the spot and caught hold of applicant and co-accused Arif Baksh on the spot itself. No other police officials, who were on patrolling duty at the time of incident, are examined and it is therefore submitted that application be allowed.

The points canvassed as aforesaid however do not impressed us to hold that complainant for above reasons PW-1 Complainant, is not a witness of the incident, as there is every possibility of his not stating of tin shed at the time of drawing of spot panchanama, as was not enquired about any such shed by the investigating officer. Though it is also argued that had applicant caught hold of deceased when co-accused Arif Baksh committed assault and as there are about 32 injuries on the person of deceased, there is every possibility of applicant sustaining some injuries, as incident is of night time and co-accused while committing assault was likely to cause some injury to applicant.

The submission as aforesaid can only be considered on evaluating the evidence at the time of final hearing while from the evidence of PW-1 Complainant *prima facie* we find applicant's involvement in the present incident, wherein co-accused Arif Baksh has caused several injuries on the person of deceased by means of sharp cutting weapon while applicant caught hold of deceased at the time of assault.

In that view of the matter and as evidence of complainant is corroborated by evidence of PW-5, the police official who was first in point of time reach on the spot and has apprehended the applicant and co-accused on the spot, we do not find it a fit case to suspend the substantive sentence, pending appeal.

Learned counsel for applicant, at this stage, prayed to expedite the hearing of appeal contending that the applicant and his brother Arif Baksh since are in jail, their families are suffering hardship as there is no other male member in their family for earning their livelihood.

In view of submissions advanced as aforesaid and as we are already hearing jail appeals of the year 2017 finally, we find the prayer made to be reasonable. Hence, we pass the following order :

- (i) Criminal Application (APPA) No.793/2018 is dismissed.
- (ii) Criminal Appeal No.199/2017 is expedited. On preparation of paper book, appeal be shown in the caption of final hearing. To be heard along with Criminal Appeal No.198/2017.
- (iii) In view of dismissal of Criminal Application (APPA) No.793/2018, Criminal Application (APPA) Nos.705/2017 and 912/2018 do not survive, hence they are disposed of.

JUDGE

JUDGE