

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

**CRIMINAL APPLICATION NO. 662 OF 2019
IN
CRIMINAL APPEAL NO. 630 OF 2019**

Hindurao Dashrath Jadhav. ..Applicant.

v/s.

The State of Maharashtra & Anr. ..Respondents.

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Kuldeep U. Nikam,
advocate for applicant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 27, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and
learned APP for State.

2 This is an application under section 389 of the Code of
Criminal Procedure, 1973 seeking suspension of sentence
imposed upon the applicant by the Sessions Judge, Satara vide
Judgment and Order dated 10th April, 2019 in Sessions Case No.
43 of 2016, during the pendency of the appeal. The applicant is

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convicted for offence punishable under section 307 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 10,000/- I.d. to suffer S.I. for 2 months. The applicant is also convicted for the offence punishable under section 506 of the Indian Penal Code and sentenced to suffer R.I. for 6 months and to pay fine of Rs. 500/- I.d. to suffer S.I. for 7 days.

3 It is true that the sentence imposed upon the applicant is of 7 years. Upon perusal of the evidence adduced by the prosecution, it can be said that the prosecution has established that the injured P.W.2 Kiran Baburao Nimbalkar had sustained injury on his head on 27/9/2015 in his agricultural land. That he was operated for depressed left parietal bone fracture. That he was treated as an injured patient till 10th October, 2015 and had to undergo an operation. It is pertinent to note that the prosecution has examined two doctors to prove the gravity of the injury sustained by P.W.2. It has not been stated by the doctor that the injuries sustained by P.W. 2 were sufficient in the ordinary course of nature to cause death. However, it is elicited in the cross-examination that the injuries sustained by P.W. 2 were not life threatening.

4 Learned Senior Counsel appearing for the applicant
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submits that in a case under section 307 of the Indian Penal Code, which contemplates attempt to murder, it would be incumbent on the prosecution to prove the genesis of the incident as well as the fact that the injuries were caused with an intention to cause murder or to cause homicidal death.

5 It is the case of the prosecution that the accused has assaulted P.W. 2 with the sharp side of the spade. However, upon perusal of the evidence by the doctor, it would be clear that there was no assault by the sharp side but the possibility that the injury was caused by butt-end of the spade could not have been ruled out. Learned APP submits that in the eventuality the injuries were not treated immediately, possibility that it would result into death cannot be ruled out at this stage. However, upon considering the nature of injuries and evidence adduced by the prosecution, this Court is of the opinion that the applicant deserves to be enlarged on bail.

6 The learned Senior Counsel submits that the applicant was on bail during the pendency of the trial and that his agricultural land is adjoining to the land of the injured. There has been no untoward incident during the pendency of the trial i.e. from 2015 on wards. Hence, the applicant who is an

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agriculturist deserves to be enlarged on bail during the pendency of the appeal.

7 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) Substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the Court of Sessions at Satara once in every 6 months on the date assigned by the Court of Sessions at Satara. Upon failure to attend any two consecutive dates, the Court of Sessions at Satara shall report the same to the High Court and the prosecution is at liberty to move for cancellation of bail.

8 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

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