

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

CRIMINAL APPLICATION [APPA] NO.287 OF 2019

IN

CRIMINAL APPEAL NO.437 OF 2018

[Shrawan s/o Sadashiv Bahe .vs. The State of Maharashtra]

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

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Court's or Judge's orders

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Shri E.W. Nawab, Advocate for applicant-appellant,
Shri M.J. Khan, APP for non-applicant-State.
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CORAM : MRS. SWAPNA JOSHI, J.

DATED : APRIL 01, 2019.

By this application, the applicant-appellant prays for suspension of jail sentence and releasing the applicant on bail during the pendency of the appeal.

Heard both the sides. Perused the application. Being aggrieved by the judgment and order dated 9.5.2018 in Sessions Case No.51/2015 passed by the learned Additional sessions Judge, Bhandara thereby convicting the appellant under section 304 Part-II of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for one year, the appellant has preferred the present appeal before this Court.

The main contention of the learned advocate for the appellant is that the appellant has already undergone sentence of three years and eight months and therefore the appellant be set at liberty on bail. It is submitted that the appellant has a strong case on merits. He is likely to succeed in the appeal, so also the appellant is not a habitual offender and is not having pre-antecedents to his credit. Learned advocate for appellant undertakes that the appellant should attend the Court as and when directed by this Court. Learned advocate placed reliance upon the

judgment in the case of **Kamal .vs. State of Haryana, (2004) 13 SCC 526.**

Learned APP contended that the accused has committed a serious offence and therefore he may not be granted bail. Learned APP opposed the application filed by the appellant.

Considering that the appellant was convicted for the offence punishable under Section 304 Part-II of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for seven years and he has already undergone half of the period i.e. three years and eight months in custody, the appellant is entitled for bail. In case of **Kamal .vs. State of Haryana** (supra), the Hon'ble Apex Court, in similar set of circumstance, granted bail to the appellant. In view of the facts and circumstances of the case, the following order is passed :

ORDER

- 1] Criminal Application No.287/2019 is allowed.
- 2] The substantive jail sentence imposed against the appellant by the learned Additional Sessions Judge, Bhandara dated 9.5.2018 in Sessions Case No.51/2015 shall remain suspended during the pendency of the present appeal.
- 3] The appellant shall be released on bail in the sum of Rs.15,000/- with a solvent surety of like amount.
- 4] The appellant shall remain personally present before this Court at the time of final hearing of the Appeal.

Criminal Application stands disposed of. Hamdast granted.

JUDGE