

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

CRIMINAL APPLICATION (APPA) NO. 316 OF 2019
IN CRIMINAL APPEAL NO. 538 OF 2018

(Bhojraj Jangale & Anr. vs. State of Maharashtra thr. PSO, Hinganghat, Dist. Wardha)
(Suresh s/o Shyamrao Kodape (presently in Central Prison, Nagpur - Applicant))

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

Court's or Judge's orders.

**CORAM : SUNIL B. SHUKRE &
PUSHPA V. GANEDIWALA, JJ.
APRIL 24, 2019.**

Heard Shri C.R. Thakur, learned counsel for the applicants and Ms. Shamsi Haider, learned APP for the non-applicant.

We have gone through the impugned judgment and order and also deposition of the complainant – PW-2. It is true that there is doubt about identification made by the complainant of all the accused but according to the impugned judgment and order, there is also some other material available on record. Unfortunately, the copies of the deposition of other witnesses are not available on record.

Nevertheless, we have gone through the record of the case in order to satisfy ourselves, whether or not there is any connecting incriminating evidence as against this applicant. The record does not show that any weapon or any stick allegedly used in the commission of crime has been recovered at the instance of the applicant.

There is a Chemical Analyser (CA) report

available on record. It is at Exh. 215 and is in respect of the clothes seized from the present applicant. This CA report does not show that any blood was detected on these clothes.

So, although, there is a finding recorded by the trial Court recording guilt of this accused – applicant, with the aid of Section 149 of IPC, we find that the linking incriminating evidence is of doubtful nature and, therefore, the case of the present applicant cannot be distinguished with Pankaj Vitthalrao Deotare – accused No. 4 and as such this applicant too would be entitled to be released during the pendency of the Appeal.

In this view of the matter, we are inclined to allow the application and it is allowed accordingly. The substantive sentences of imprisonment awarded to this applicant – Suresh s/o Shyamrao Kodape, are hereby suspended till final disposal of the appeal, provided fine are duly paid and till that time, if fine amounts are paid, it is directed that the appellant/ applicant be released on bail on his furnishing a P.R. Bond of Rs. 50,000/- together with one solvent surety in the like sum on the condition that he shall appear before this Court as and when directed.

Criminal Application is disposed of accordingly.

JUDGE

JUDGE

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