

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

CRIMINAL APPLICATION (APPP) NO.1562/2018

IN

CRIMINAL APPEAL NO.581/2018

Manohar s/o Shankar Tayade

..vs..

State of Mah., thr. Police Station Officer, Police Station Raipur, Taluka and
District Buldana

.....
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.J.Thakkar, Counsel for the applicant.

Mrs. S.V.Kolhe, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 10, 2019.

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. I have heard learned counsel Shri A.J.Thakkar for the applicant and learned Additional Public Prosecutor Mrs. S.V.Kolhe for the State.

3. On 25.9.2018, the present appeal is already admitted by this Court (Coram : Z.A.Haq, J.). The record and proceedings are also received. With assistance of both learned counsel, I have perused evidence of Sakhubai wd/o Sanjay Janjalkar (PW1) who lodged oral report (Exhibit 15) on 29.10.2015 in respect of incident dated 28.10.2015. Similarly, I have also perused postmortem report (Exhibit 39).

4. Though the applicant was charged by learned

Judge below in Sessions Trial No.1/2016 for offence under Section 302 of the Indian Penal Code, he is acquitted of the said offence and convicted for offence under Section 304 Part II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.20,000/- and in default of payment of the fine amount to suffer rigorous imprisonment for 1 year.

5. After perusing evidence of Sakhubai wd/o Sanjay Janjalkar (PW1); the First Information Report (Exhibit 15), and the postmortem report (Exhibit 39), it is crystal clear that learned Judge below was absolutely right at least *prima facie* in not convicting the applicant under Section 302 of the Indian Penal Code.

6. Contention of the applicant are kept open in respect of challenging his conviction under Section 304 Part II of the Indian Penal Code which will be considered at appropriate time.

7. The applicant was on bail during the course of the Trial. It is not complaint of the prosecution that when the applicant was on bail, he misused the liberty granted to him in his favour.

8. Looking to the nature of the evidence and the fact that the applicant was on bail, in my view, the applicant has made out a case for suspension of substantive jail sentence and for grant of bail. That leads me to pass following order:

ORDER

(i) The criminal application is allowed.

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(ii) Substantive jail sentence imposed upon the applicant on 3.7.2018 by learned Sessions Judge, Buldana in Sessions Trial No.1/2016 shall remain suspended during the pendency of the appeal.

(iii) The applicant shall be released on bail on he executing a P.R.Bond in the sum of Rs.20,000/- with one solvent surety of the like amount.

(iv) Learned Judge below before whom the Bail Bonds will be executed shall ensure that before releasing the applicant on bail the applicant has deposited entire fine amount.

(v) The applicant shall attend the Police Station Raipur, Taluka and District Buldana once in a 6 month during the pendency of the appeal.

(vi) The applicant shall remain present before the Court at the time of final hearing of the appeal.

(vii) With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

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