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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1682 OF 2020
IN
CRIMINAL APPEAL NO.541 OF 2019

. Ramesh s/o Venkati Kadam = APPLICANT

VERSUS

. The State of Maharashtra = RESPONDENT/S

Mr. SS Londhe, Advocate for Applicant;
Mrs. Vaishali Patil-Jadhav, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 16th December, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. The applicant, by this Criminal Application, pray for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused No.1 in Sessions Case No.41/2015 before the Additional Sessions Judge, Nanded. The applicant has been convicted for the offence punishable under Section 304 (II) of IPC and he is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.2,000/-, in default, R.I. for two months.

4. It is vehemently submitted on behalf of the applicant that the conviction is based upon presumptions, surmises and conjectures. There is no sufficient, cogent, reliable evidence on record to convict the applicant-accused. This is the successive application seeking suspension of sentence owing to change in circumstances. His earlier application was not pressed. The application filed by co-accused in the crime has been partly allowed. The learned Judge did not consider the evidence of the prosecution witnesses judiciously and erred in convicting the appellant. There is no corroborative evidence to help the prosecution to convict the applicant. Evidence of the complainant is not conclusive and some of the witnesses turned hostile and they did not support the prosecution. The Medical evidence does not support the prosecution case. The complaint was lodged afterthought. There is no explanation of delay in lodging the FIR from the prosecution. The applicant has no criminal antecedent. He has undergone two years imprisonment and the appeal is filed long before. False implication of the applicant is apparent. The applicant has challenged the judgment and order of conviction passed by the learned Sessions Judge by way of the appeal *inter alia* on numerous grounds as set out in the appeal itself and the applicant is having every hope of success therein. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence and he would abide by any terms.

5. Per contra, learned APP strongly opposed the application and supported the reasons given by the learned Sessions Judge while convicting and imposing the sentence against the applicant. In order to prove the case, the prosecution has examined as many as ten witnesses. As against this, the accused did not examine any witness in his support. It is further submitted that the impugned judgment requires no interference and, therefore, the application lacks merit, it deserves to be dismissed and it be dismissed accordingly.

6. At the outset, it is necessary to mention that there is prima facie material to indicate that involvement of present applicant in the offence of commission of culpable homicide, not amounting to murder. From the evidence on record, prima facie, there was quarrel between PW 1 and deceased Gangaram on one side and accused on the other. Deceased Gangaram was assaulted by fist blows and stick blow. The Trial Court found the testimony of PW 1, 2 and 5 to be cogent and consistent. Though name of PW 2 does not find place in the FIR, testimony of PW 1 and 5 is consistent as regards involvement of the present applicant. Taking into consideration the available materials on record; testimonies of the prosecution witnesses, medical evidence, the applicant does not deserve to be released on bail and suspend the sentence.

7. Though in the case of Kiran Kumar Vs.

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State of M.P. - (2001) 9 SCC 211, it has been observed that if it is not possible to take up the matter for final hearing, bail should be granted and substantive sentence be suspended; however, by expediting the appeal, it can be taken up for hearing.

8. In the result, no case is made out to suspend the substantive sentence and releasing the applicant on bail, the application deserves to be dismissed and it is accordingly dismissed. At the most, the appeal can be expedited and accordingly it is expedited.

(SMT. VIBHA KANKANWADI, J.)

BDV