

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

**INTERIM APPLICATION NO.1715 OF 2019
IN
CRIMINAL APPEAL NO.1728 OF 2019**

Vikas Jagan Sutar

.. Applicant

Vs.

State of Maharashtra & Anr.

.. Respondents

.....

Mr.R.D. Suryawanshi, Advocate for the Applicant.

Ms.Veera Shinde, APP for Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

**DATED : NOVEMBER 06, 2020.
(THROUGH VIDEO CONFERENCING)**

P.C.:

This is an application for suspension of sentence of imprisonment awarded vide judgment and order dated 7th October, 2019, passed by the Additional Sessions Judge, Kalyan, in Sessions Case No.57 of 2009, convicting the applicant for the offence under Section 307 of Indian Penal Code ("IPC", for short). The applicant is sentenced to suffer rigorous imprisonment for eight years and to pay fine of Rs.50,000/-.

2 The case of the prosecution is that the injured witness was assaulted by the accused with sword on 3rd October, 2008. Accused no.2 had allegedly handed over the sword to the

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applicant. The applicant has been convicted, whereas, accused no.2 is acquitted.

3 Learned counsel for the applicant submitted that the applicant was on bail during the trial. On instructions, it is submitted that during the bail the applicant has not misused the facility of bail. The victim is the neighbour of the applicant and there is no untoward incident at the instance of the applicant against the injured during the pendency of trial and after he is released on bail. The applicant was in custody from 4th October, 2008 to 7th May, 2010. On conviction, the applicant has been taken into custody from 7th October, 2019 and for a period of about more than a year, the applicant is in custody. It is further submitted that there are contradictory versions of the witnesses. Initially, one more accused, namely, Ganesh Patil was arrested in this case. However, report under Section 169 of Cr.P.C. was filed and he has been discharged. The motive is not clear. P.W.1 is the eye witness to the incident. He is the son-in-law of the injured. His evidence discloses that he was tutored. He is not clear about the reason for assault. The evidence of the injured person indicate that accused no.1 came from behind and gave blows of sword on his head. After assaulting, the assailants ran away. In the cross-examination, he stated that while recording his

statement, he stated that he saw the assailants while running away, but, police did not record the same. He also stated that he was not on cross terms with anybody in the village and came to know about the names of the arrested persons after regaining consciousness. Learned counsel also pointed out evidence of medical officer who has referred to two injuries sustained by the victim. On the basis of evidence of the investigating officer, it was contended that the statement of the injured was recorded after a period of about three months. The evidence on record discloses that he was discharged from the hospital after about eleven days.

4 Learned APP submitted that specific overtact is attributed to the applicant by injured witnesses. P.W.1 is also an eye witness to the incident. Medical evidence supports the prosecution case. The prosecution has established the charge on the basis of evidence.

5 The incident is dated 3rd October, 2008. Applicant was arrested on 4th October, 2008. It appears that during the trial, applicant was in custody for a period of about 18 months and after the judgment of conviction, he has undergone custody for about one year. Accused was on bail during trial for a period of about nine years. The evidence on record discloses that accused

no.2 was instrumental in bringing sword and handing it over to the applicant. Accused no.2 has been acquitted. It appears that there are contradictions in the evidence of witnesses. The motive for commission of crime is not very clear. Considering these aspects, case for suspension of sentence is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.1715 of 2019, is allowed;
- (ii) The sentence of imprisonment awarded vide judgment and order dated 7th October, 2019, passed by Additional Sessions Judge, Kalyan, in Sessions Case No.57 of 2009, is suspended, pending the Appeal against conviction preferred by the applicant on his executing P.R.Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall attend concerned police station once in three month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

(iv) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)