

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

22 CRIMINAL APPLICATION NO.306 OF 2021
IN
CRIMINAL APPEAL NO.49 OF 2021

SAMAD SALAR SAYYAD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Narwade Narayan B.
APP for Respondents : Mrs. P V Diggikar

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.
Dated: August 09, 2021

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PER COURT :-

1. Heard.
2. Pending the criminal appeal no.49 of 2021 preferred against the judgment and order of conviction passed by the learned Additional Sessions Judge, Ahmednagar dated 22.1.2021 in Sessions Case No.214 of 2018, thereby convicting and sentencing the applicant/accused to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default to suffer R.I. for six months for the offence punishable under section 302 of the IPC, the applicant/accused has preferred this

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application for suspension of the substantive part of the sentence and for bail.

3. Learned counsel for the applicant/accused submits that, it is a case of single blow. Learned counsel submits that, PW-1 Shahnaz Ayyub Sayyad is the only eye witness to the incident, and she has deposed that, when she saw the incident, scuffle was going on between the deceased and the accused. In the said scuffle, the applicant/accused had given a blow of wooden stick on the head of the deceased and that is a single blow. No other injuries were found on the person of the deceased as per column no.17 of the postmortem report. Learned counsel submits that, the trial court has discussed exception of section 300 of the IPC and in paragraph no.37 of the judgment observed that whether culpable homicide amounting to murder or not needs to be scrutinized on the basis of the exceptions appended to section 300 of the IPC. In paragraph no.39 of the judgment, the trial court has referred all the exceptions

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of section 300 of the IPC and concluded that the case does not fall under section 304 -II of the IPC.

4. Learned counsel for the applicant has placed his reliance on a case Ruli Ram and another Vs. State of Haryana reported in AIR 2002 SC page 3360, wherein in paragraph no.21 of the judgment, the Supreme Court has made following observations :-

“21. The plea of the learned counsel for the State that Section 304 Part II applies only when exceptions to [Section 300](#) cover a case is misconceived. The decision in Harendra Mandal's case (supra) was rendered in a different context and observations in the same case cannot be read out of context. That was a case where death itself had not been caused and therefore, question of applying [Section 304](#) IPC did not arise. ”

5. Learned counsel for the applicant submits that, there was a dispute in respect of the services to be offered to Janpeerbaba Darga. There is no antecedents. There is no evidence that the alleged incident had taken place by premeditation. The applicant/accused was on bail during the course of the trial. He may be released on bail by suspending the substantive part of the sentence.

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6. Learned APP has strongly resisted the application on the ground that, though it is a case of single blow, however, the applicant had used a wooden log and chosen vital part of the body for inflicting the blow. Learned APP submits that, as per the postmortem report, particularly, clause no.17 there is CLW behind left ear on head and during internal examination, the concerned Medical Officer, who has conducted the postmortem examination, has observed intracranial bleeding present clots. Learned APP submits that, PW-1 Shahnaj is the eye witness to the incident. Prosecution case rests upon the ocular evidence. The applicant may not be released on bail.

7. We have carefully gone through the judgment of the trial court particularly, paragraph no.37 and 39 of the judgment. It appears that the trial court has only considered exceptions to section 300 of the IPC to find out as to whether the case of inflicting a single blow falls under section 304-II of the IPC or not. The trial court has refused to consider any other contingency except by
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way of exceptions to section 300 of the IPC. The applicant allegedly used a wooden log in a scuffle, which is witnessed by PW-1 Shahnaz. Said scuffle had taken place on account of some trifling reason for the services to be given to Janepербaba Darga. Prima facie, we do not find any evidence to indicate that the act of the applicant was eminently dangerous. In the said scuffle, applicant had given a single blow on the head of the deceased. We have perused column no.19 of the postmortem report to find out the internal injuries corresponding to the injury mentioned in column no.17 of the postmortem report. There is only one injury in the column no.17 which was in the form of CLW, wherein the dimension of the injury is mentioned as 7x3x2 cm deep. There is no skull fracture as observed specifically by the Medical Officer, who has conducted the postmortem examination. There was only clotting of blood without skull fracture. Said fact also indicates the force behind single blow.

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8. In a case Ruli Ram and another Vs. State of Haryana (supra) relied upon by the learned counsel for the applicant, the Supreme Court in paragraph no.21 of the Judgment has observed that 'plea of the learned counsel for the State that section 304 Part-II applies only when the exceptions to section 300 of IPC cover a case is misconceived.'

9. Thus, considering the entire aspect of the case, we are inclined to grant bail to the applicant, who was on bail during the trial and he has never tried to jump the conditions of bail. There is no antecedents. Hence following order.

ORDER

- I. Criminal application is hereby allowed.
- II. Pending the Criminal appeal No.49 of 2021 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 22.01.2021 in Sessions Case No.214 of 2018, the substantive part of the sentence is hereby suspended, and till then, applicant Samad Salar Sayyad be released on bail on

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furnishing P.B. of Rs.25,000/- (Rs. Twenty Five Thousand) with one solvent surety of the like amount.

III. Criminal application accordingly disposed off.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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