

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2512 OF 2021 IN APPEAL/529/2021

KALIDAS BABASAHEB BODKHE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Z. H. Farooqui h/f. Mr. N. V. Gaware
APP for Respondent-State : Mr. S. P. Sonpawale
...

CORAM : N. R. BORKAR, J.
DATE : 25-10-2021

PER COURT :-

This is an application under Section 390 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for suspension of substantive sentence awarded under the impugned Judgment and order dated 20-09-2021 passed by the learned District Judge-3 and Additional Sessions Judge, Ahmednagar, in Sessions Case No. 272 of 2018 and to release the applicant-original accused on bail.

2. The applicant-accused is convicted for the offence punishable under Section 326 of the Indian Penal Code (IPC) and sentenced to suffer Rigorous Imprisonment (RI) for three years and to pay a fine of Rs.50,000/- and in default of payment of fine, he is further sentenced to suffer RI for six months. The applicant is also convicted for the offence punishable under Section 324 of IPC and sentenced to suffer RI for one year and to pay a fine of Rs.30,000/- and in default of payment of fine, he is further sentenced to suffer RI for four months.

3. Heard learned counsel for the applicant and learned APP for the respondent – State.

4. Learned counsel for the applicant submits that the applicant has good case on merit. It is submitted that applicant was on bail during the trial and did not misuse the liberty granted by the Court. He submits that learned Sessions Judge has suspended the substantive sentence after conviction till 30-10-2021. It is submitted that if sentence is not suspended then appeal itself will become *infructuous*.

5. On the other hand, learned APP for the respondent-State submits that there are two injured. The applicant assaulted to injured by spade on head of one of the injured. Considering the nature of offences, the substantive sentence may not be suspended.

6. Considering the short term of sentence and as during the course of trial the applicant was on bail, I am inclined to suspend the substantive sentence and release the applicant on bail. Hence, the order -

O R D E R

- (i) Criminal application is allowed. The substantive sentence awarded to the applicant under Judgment and order dated 20-09-2021 passed by learned Additional Sessions Judge, Ahmednagar, in Sessions Case No. 272 of 2018, is hereby suspended. The applicant be released on bail on furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
- (ii) Bail before the Trial Court.

(N. R. BORKAR)
JUDGE