

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 CRIMINAL APPLICATION NO.3134 OF 2021
IN APEAL/654/2021

SACHIN RAJU GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

Mr.J.V. Deshpande, Advocate for the applicant.
Ms.G.L. Deshpande, APP for the respondent/State.

CORAM : N.R.BORKAR, J.
DATED : 21.12.2021

PC :-

01. This is an application under section 389 of the Cr.P.C. to suspend the substantive sentence and to release the applicant on bail.

02. The applicant came to be convicted for the offence punishable under section 306 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six years and to pay fine of Rs.5000/- in default of payment of fine to suffer rigorous imprisonment for three months.

03. I have heard the learned Counsel for the applicant and learned APP for the respondent/State.

04. The applicant along with other co-accused was tried for the offences punishable under sections 302, 307, 328 r/w 34 of the Indian Penal Code. The Trial Court acquitted all the accused of the said offences. The Trial Court, however, convicted the present applicant for the offence punishable under section 306 of the IPC. The learned Counsel for the applicant submits that there is no evidence in relation to alleged abetment and the Trial Court has convicted the applicant only on the basis of presumption under section 113-A of the Evidence Act. It is further submitted that no alternative charge for the offence punishable under section 306 of the IPC was framed. It is submitted that the applicant was on bail during the trial and he did not misuse the liberty granted to him. It is submitted that this Court has already admitted the appeal and considering short term of sentence, the substantive sentence be suspended and the

applicant be released on bail.

05. On the other hand, learned APP for the respondent/State submits that the applicant is convicted for the serious offence punishable under section 306 of the IPC. It is submitted that the present applicant was suspecting the character of the deceased and used to beat her. It is submitted that considering the nature of the offence, the substantive sentence may not be suspended and the applicant may not be released on bail.

06. Admittedly, no charge under section 306 of the IPC was framed. The Trial Court acquitted the accused for the offence punishable under section 302 of the IPC. The applicant was on bail during the Trial. Considering these facts and circumstances and short term of sentence, I am inclined to suspend the substantive sentence and to release the applicant on bail. In the result, following order is passed :-

O R D E R

- i) The application is allowed.
- ii) The substantive sentence imposed by the Trial Court upon applicant is suspended and the applicant shall be released on bail on furnishing PR bond in the sum of Rs.25,000/- (Twenty Five Thousand) with one solvent surety in the like amount.
- iii) The applicant shall attend the Trial Court once in a month i.e. on first working Monday of every month between 11.00 a.m. to 05.00 p.m. during pendency of the appeal.
- iv) Bail before the Trial Court.
- v) The record and proceedings be sent back to the concerned Sessions Court. The concerned Sessions Court shall re-submit the record and proceedings with paper book.

[N.R.BORKAR,J.]