

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

**CRIMINAL APPEAL NO. 871 OF 2021
WITH
INTERIM APPLICATION NO. 2566 OF 2021
IN
CRIMINAL APPEAL NO. 871 OF 2021**

Swapnil @ Yuvraj Anantrao Mirajkar Appellant
v/s.
The State of Maharashtra Respondent

Mr. Anand S. Patil for the Applicant/Appellant.
Mr. P.H. Gaikwad, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 26th OCTOBER, 2021.

P. C. :-

ORDER IN CRIMINAL APPEAL NO. 871 OF 2021 :-

. Heard. Admit. Call for the record and proceedings. Paper book to be filed within a period of six month. Learned APP waives service on behalf of Respondent.

ORDER IN INTERIM APPLICATION NO. 2506 OF 2021 :-

2. This is an Application under Section 389 of Cr.P.C. for suspension of substantive sentence imposed by judgment dated 14/10/2021 in Sessions Case No.2/2016. By the impugned judgment, the learned

Additional Sessions Judge & District Judge-5, Kolhapur has held the Applicant guilty of offence under Section 307, 353 and 504 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.2,000/- in default to undergo simple imprisonment for one month in respect of offence under section 307 of the Indian Penal Code. The Applicant is ordered to undergo rigorous imprisonment for three years in respect of offence under Section 353 and one year in respect of offence under section 504 of the Indian Penal Code.

3. Heard Mr. Anand S. Patil, learned counsel for the Applicant and Mr. P.H. Gaikwad, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The charge against the Applicant is that on 15/08/2015, at about 07:30 a.m., at Koyana Colony, the Applicant assaulted the PW1 – Sanjay Vasant Devkule by means of a bamboo stick with an intention of causing his death. It is also alleged that he had abused said Sanjay and had used criminal force against him while he was discharging his duty as a public servant. The evidence of PW1 prima facie indicate that the

Applicant had inflicted a single blow on the head of the PW1. Prima facie, there is no material on record to indicate that the Applicant had intended or attempted to cause the death of PW1.

5. Considering the above facts and circumstances and also the nature of accusations and evidence in support thereof, in my considered view, this is a fit case for suspension of substantive sentence pending hearing of the Appeal. Hence, the Interim Application is allowed on following terms and conditions :-

(a) Execution of substantive sentence imposed against the Applicant by judgment dated 14/10/2021 in Sessions Case No.2/2016, is suspended pending hearing of the Appeal ;

(b) The Applicant shall be released on bail on furnishing P.R. Bonds in the sum of Rs.15,000/- with one or two solvent sureties in the like amount to the satisfaction of the Trial Court ;

(c) The Applicant shall report to the Trial Court once in two months on the day/ date specified by the Trial Court, till

the Appeal is finally disposed of ;

(d) The Applicant shall keep the trial Court informed of his current address and mobile/contact numbers and/or change of residence or mobile details, if any, from time to time ;

(e) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file application seeking cancellation of bail.

6. Interim Application stands disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)