

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 633 OF 2020
IN
CRIMINAL APPEAL NO. 204 OF 2020

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Sarfaraj @ Pappa Allauddin Sayyad ..Applicant

V/s.

The State of Maharashtra ..Respondent

Mr. Lokesh Zade for the Applicant.

Mr. R.M. Pethe, APP for the Respondent No.1/State.

CORAM : C.V. BHADANG, J.

DATE : 30 NOVEMBER 2021

P.C.

1. This is an application for suspension of sentence and for bail. The applicant is original accused No.2. The applicant along with co-accused Krushna @ Kittya Ghanteshwar were tried before the learned Sessions Judge at Pune in Sessions Case No. 816 of 2017 for the offence under Section 307, 323, 504, 506 read with Section 34 of IPC and Section 4 (25) of the Arms Act ad Section 37(1)(3) read with Section 135 of the Maharashtra Police Act. There was a third assailant who is stated to be a juvenile, who has been proceeded separately before the Juvenile Justice Board.

2. The learned Sessions Judge by the impugned Judgment dated 29.01.2020 has convicted the applicant and the co-accused for the offence under Section 307, 323 read with Section 34 of IPC and the applicant has been sentenced to suffer rigorous imprisonment for four years with fine under Section 307 and to suffer rigorous imprisonment for three months under Section 323 read with Section 34 of IPC. The applicant has been acquitted from the offence under Section 504 and 506 read with Section 34 of IPC and under the Arms Act as well as the Maharashtra Police Act.

3. I have heard the learned counsel for the applicant and the learned APP.

4. The learned counsel for the applicant points out that the applicant was arrested on 06.08.2017 i.e. date of the incident and was released on bail on 12.12.2017 and the applicant has again been taken in custody for serving the sentence on 29.01.2020 i.e. the date of his conviction. The learned counsel pointed out that the applicant has undergone imprisonment for more than two years. It is also submitted that the eye witness PW-3 has only stated about an assault by kicks and fists blows. In the submission of the learned counsel for the applicant the nature of the injuries are not relatable to an assault by sickle as alleged by the prosecution and the Medical Officer has also found that the

victim was under influence of liquor and therefore, the possibility of injuries being accidentally sustained, cannot be ruled out.

5. Upon hearing the learned counsel for the applicant and the learned APP and having regard to the fact that the maximum sentence imposed is four years out of which the applicant has undergone more than two years of imprisonment and the fact that the applicant was on bail and further having regard to the nature of the submissions made on behalf of the applicant, I find that the application deserves to be granted.

6. Hence, the following order:

i) The substantive sentence of imprisonment awarded to the applicant is hereby suspended pending disposal of the appeal, subject to the applicant furnishing a PR bond of Rs.20,000/- with one or two solvent sureties in the like amount and on payment of fine, if not already paid.

ii) The applicant shall undertake to remain present before this Court as and when directed.

iii) The bail bonds to be furnished before the learned Sessions Judge.

iv) Interim Application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)