

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

**INTERIM APPLICATION NO. 792 OF 2019
ALONG WITH
INTERIM APPLICATION NO. 1504 OF 2021
IN
CRIMINAL APPEAL NO.43 OF 2020**

Sarabjitsingh Harbhajan Lakshotra
@ Happysingh

... Applicant

Versus

The State of Maharashtra

... Respondent

.....

Mr. Aniket Vagal, Advocate for the Applicant in both Interim Applications.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 8th JULY, 2021

PER COURT:

1. Interim Application No. 792 of 2019 is preferred for suspension of sentence of imprisonment imposed vide Judgment and order dated 19th July, 2019 passed by Additional Sessions Judge, Sessions Court, Gr. Mumbai in Sessions Case No. 514 of 2013. Interim Application No. 1504 of 2021 is filed by applicant through Jail for hearing his application for bail. The applicant is convicted for offence punishable under Section 307 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment of Seven years. He is also convicted for offence under Section 326(A) of IPC and

sentenced to suffer imprisonment for Ten years.

2. The Judgment of conviction has been challenged by preferring appeal which has been admitted and pending for final disposal.

3. The case of the prosecution is that there is dispute amongst brothers about sharing the rent of Dhaba owned by the family. The applicant and the victim are real brothers. On 23rd February, 2013, the injured was assaulted by the applicant with axe and the applicant/accused also thrown acid on him. The First Information Report (for short 'FIR') was registered. Charge-sheet was filed. The applicant was tried for the said offences and convicted.

4. Learned advocate for the applicant made following submissions :-

i) There was no intention to cause death. Hence, Section 307 of IPC is not attracted.

ii) The injuries were not serious. The injured was discharged from the hospital after 5 days.

iii) The applicant was granted bail during the pendency of trial on a condition that he should stay out of jurisdiction of Andheri (E) Marol and more particularly shall not to visit Uttam Dhaba until disposal of the case.

iv) The applicant is in custody for a period of about two years and nine months. While on bail during the period of trial, the applicant has not misused the facility of bail. The applicant did not tamper with the evidence.

5. Learned APP submitted that the offence is of serious nature. The injuries of injured were serious. The applicant has assaulted the injured with axe causing injuries and also thrown acid, which is resulted an injury. The nature of injuries would suggests that the applicant had intention to kill the injured. Hence, the sentence may not be suspended.

6. The incident is of 2013. The applicant was on bail during the trial for substantial period of time. He is in custody for a period of about Two years and Nine months. Conditions was imposed on the applicant restraining him from entering into the jurisdiction of Andheri (E) Marol and not to visit Dhaba. It is not reported that the applicant had misused the facility of bail. It is not disputed that there are no criminal antecedents against the applicant. The Medical Officer have described the nature of injuries. In the evidence of PW-10 it is deposed that the patient was admitted on 23rd February, 2013 and discharged on 28th February, 2013. In the cross examination he stated that there are three types of injuries, simple, grievous and

dangerous to the life. It is true that while issuing certificate, it is required to specify the nature of injuries. In examination paper he has not specified the types of injuries. It is true that for the first time he gave his opinion in the Court in respect to the injuries suffered by the patient. The patient did not develop any infection. There was no continuous bleeding after suture to the injuries. The applicant has undergone custody for a period of two years and nine months. The appeal against conviction has been admitted by this Court. The appeal is not likely to be heard shortly. The order granting bail during the pendency of trial indicate that the applicant was directed not to enter the jurisdiction of Andheri (E) Marol and and restrained from visit to Uttam Dhaba until disposal of the case. He was also directed to attend concerned Police Station. Considering the aforesaid circumstances, sentence can be suspended on certain terms and conditions.

7. Hence, I pass the following order:

ORDER

(i) Interim Application Nos. 792 of 2019 & 1504 of 2021 are allowed.

(ii) The sentence of imprisonment imposed vide Judgment and order dated 19th July, 2019 passed by the Sessions Court in Sessions Case No. 514 of 2013 is suspended during the pendency of appeal and applicant is directed to be released on

bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more local solvent sureties in the like amount;

(iii) The applicant shall attend M.I.D.C. Police Station once in four months on first Saturday of the month between 11:00 a.m. to 1:00 p.m.

(iv) The applicant shall not enter into the jurisdiction of Andheri (E), Marol and he shall not visit Uttam Dhabha till further orders.

(v) Interim Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)