

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

**INTERIM APPLICATION NO.1447 OF 2021
IN
CRIMINAL APPEAL NO.1075 OF 2019**

Mangal Laxman Pawar

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mrs. Anjali Patil for the Applicant.

Mrs. G.P. Mulekar, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 14th JULY, 2021.

P.C.:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive order of sentence passed by learned Additional Sessions Judge, Kalyan in Sessions Case No.179 of 2014 and to enlarge him on bail.

2. The Applicant along with the other co-accused was tried for offences punishable under Sections 302, 307, 323, 324 and 326 r/w 34 of the IPC. Upon considering the evidence on record, the learned Trial Judge has held the Applicant and other co-accused guilty of offence under Section 304 (I) r/w Section 34 of the IPC and sentenced them to

undergo rigorous imprisonment for 10 years and fine of Rs.25,000/- i/d to suffer simple imprisonment for six months. The Applicant and the other co-accused have been acquitted of Sections 307 and 323 r/w Section 34 of the IPC and convicted for offence under Section 324 r/w Section 34 of the IPC and sentenced to suffer rigorous imprisonment for three years and fine of Rs.5,000/- i/d to suffer simple imprisonment for one month. Aggrieved by the conviction and sentence, the Applicant has filed an appeal, pending which he has prayed for suspension of sentence and enlargement on bail.

3. Heard the learned counsel for the Applicant and the learned APP for the Respondent-State. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The accusations against the Applicant are that on 06/04/2014 he obstructed the daughter of the first informant, while she was proceeding towards a toilet. The first informant went to the house of the Applicant to question him about the said incident, at which time the Applicant and the other accused assaulted the first informant and others by iron rods and wooden sticks.

5. Learned Sessions Judge has recorded that the incident had

occurred in the course of scuffle between both the groups and there was no intention to cause death of Tatu Narayan Pawar.

6. The material on record prima facie indicates that the incident was not pre-meditated and occurred at the spur of the moment. The Applicant herein was on bail during the pendency of the case and he has not misused the liberty. Other co-accused Lakhya @Rakesh Mangal Pawar, who was also armed with iron rod and was placed in similar situation has been released on bail. Considering all these facts and also the fact that the Applicant has already undergone imprisonment of three and half years, in my considered view this is a fit case for suspension of sentence and enlargement of the Applicant on bail pending hearing of the appeal.

7. Hence, the application is allowed on following terms and conditions:-

- (i) The Applicant is directed to be released on bail upon furnishing P.R. Bond in sum of Rs.1,00,000/- with one or two sureties in the like amount.
- (ii) The Applicant shall report to the Trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of.

(iii) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(iv) 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 an application seeking cancellation of bail.

8. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)