

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

INTERIM APPLICATION NO.2001 OF 2021

IN

RAJESH
VASANT
CHITTEWAN
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RAJESH VASANT
CHITTEWAN
Date: 2021.08.30
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CRIMINAL APPEAL NO.660 OF 2021

Tushar Dinesh Lande ... Appellant/Applicant

Versus

The State of Maharashtra

(Through Gangapur Police

Station Nasik, C.R.No.I-22/2018)

... Respondent

.....

Mr. Swapnil V. Walve for the Appellant.

Mr. S.B. Gavand, APP for the State.

.....

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 25 AUGUST 2021

P. C. :

. This is an application under Section 389 of Criminal Procedure Code to suspend substantive sentence of imprisonment imposed by judgment dated 22 July 2021 in Sessions Case No.218 of 2018. By the impugned judgment, the learned Sessions Judge, Nasik has held the Applicant guilty of offences under Section 304 Part-I read with Section 34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for seven years with fine of Rs.1000/- each, in default to suffer simple imprisonment for three months each.

2 The case of the Prosecution as narrated by P.W.2 and P.W. 3 is that on 29 January 2018 the Applicant and the co-accused Akash came to the place of the incident on a motorcycle. The co-accused, who was a pillion rider, got down from the motorcycle and slapped the deceased Baban. There was a scuffle between the co-accused Akash and the deceased, at which time, the Applicant, the rider of the motorcycle got down from the motorcycle and held the deceased from behind and that the co-accused stabbed the deceased on his stomach.

3 The material on record indicates that the Applicant had not inflicted any injury on the deceased Baban. He is stated to have caught hold of the deceased. The fight was basically between the co-accused and and the deceased. Learned Judge has observed in paragraph-68 of the judgment that the incident had occurred without premeditation, in a sudden fight on a spur of the moment. Keeping in view the role attributed to the Applicant, in my considered view, this is a fit case to suspend the sentence. Moreover, the Applicant was on bail during rial and he had not misused his liberty.

4 Having regard to the facts and circumstances, the substantive sentence of imprisonment imposed on the Applicant is suspended during pendency of the criminal appeal and he shall be released on bail on following terms and conditions :

- (a) The Applicant is ordered to be released on bail on furnishing P.R. Bond in the sum of Rs.20,000/- (Rs.

Twenty Thousand Only) with one or two sureties in the like amount to the satisfaction of the Trial Court ;

- (b) 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 ;
 - (c) If there are two consecutive defaults in appearing before the trial court, the learned Judge shall make a sport to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail ;
 - (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.
- 5 The Interim Application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)