

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 396 OF 2021

IN

CRIMINAL APPEAL NO. 288 OF 2021

(Dharmraj s/o Kantilal Gahagaye Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A.D. Tote, Advocate for the applicant/ appellant.
(appointed).

Mrs. M.A. Barabde, A.P.P. for the respondent.

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**CORAM : M.S. SONAK &
PUSHPA V. GANEDIWALA, JJ.
NOVEMBER 24, 2021.**

Heard Mr. Tote, learned counsel
appointed under the legal aid scheme for the
appellant, and Mrs. Barabde learned A.P.P. for the
respondent.

2] This is an application for suspension of
sentence pending appeal against the judgment and
order dated 04/02/2016 passed by the Sessions
Court, Gondia convicting the appellant for the offense
punishable under Section 302 of the Indian Penal
Code and sentencing him to rigorous imprisonment
for life.

3] Mr. Tote, learned counsel submits that
the appellant has very good chances to succeed on

merits. He submits that the prosecution case is purportedly backed by interested witnesses. There was no recovery in terms of Section 27 of the Evidence Act and identification is also extremely doubtful on account of the light conditions at the time of the alleged commission of the crime. He submits that the appellant has already spent almost 7 years in prison and it is becoming difficult for his family members to survive. For all these reasons, Mr. Tote submitted that the sentence may be suspended.

4] Mrs. Barabde, learned A.P.P. opposed the contentions raised by Mr. Tote and submitted that even during trial, the appellant was not on bail, and further the conviction is based on cogent and admissible evidence.

5] According to us, this is not a fit case for suspension of sentence. Apart from the fact that the appellant was not on bail during the trial, we find that the contentions now raised by Mr. Tote are the contentions that can be considered at the stage of disposal of the Appeal. Besides, we find that *prima-facie* the conviction is based on the testimony of eye-witnesses and also medical/ forensic evidence. The conviction is for a serious crime and a sentence of life imprisonment is awarded to the appellant.

6] Having regard to all these factors, we do not think that it would be appropriate to suspend the sentence and enlarge the appellant on bail. However, we are inclined to accept the alternate statement of Mr. Tote that this Appeal be expedited.

7] Accordingly, the application for suspension of sentence is dismissed. However, the Registry is directed to expedite the preparation of the paper book and thereafter place this matter for final disposal.

8] The application for suspension of sentence is disposed of in the aforesaid terms. There shall be no order as to costs.

9] For purposes of this application, we quantify the fees payable to Mr. Tote at Rs.1,500/- (rupees one thousand five hundred only).

(PUSHPA V. GANEDIWALA, J.) (M.S. SONAK, J.)

Sumit