

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

CRIMINAL APPLICATION (APPA) NO.534/2020

IN

CRIMINAL APPEAL NO.518/2020

Sambhaji s/o Pralhad Kalbage

..vs..

State of Mah., thr.PSO Balapur Police Station, District Akola, Maharashtra

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

Court's or Judge's Order

.....
Shri S.S.Das, Counsel for the Applicant (Appointed).
Shri T.A.Mirza, Addl.P.P. for the State.

**CORAM : V.M.DESHPANDE &
AMIT B.BORKAR, JJ.**

DATED : OCTOBER 05, 2021

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. By judgment and order of conviction dated 11.4.2018 passed by learned Additional Sessions Judge, Akola in Sessions Trial No.154/2011, the applicant was convicted for offence punishable under Section 302 of the Indian Penal Code and was directed to suffer imprisonment for life.
3. The applicant is neighbour of deceased Shriram.
4. This appeal was admitted on 18.12.2020. For consideration of the present application, record and proceedings were called for. Accordingly, record and proceedings are received and those are kept for our perusal.

5. We have heard learned counsel Shri S.S.Das appointed by the High Court Legal Services Sub Committee at Nagpur to represent the applicant and learned Additional Public Prosecutor Shri T.A.Mirza for the State.

6. According to learned counsel for the applicant, if evidence of Gunjabai (PW1) is scrutinized in its correct perspective, it shows that she is not sure whether First Information Report (Exhibit-42), which is filed in the name of Bhuljabai, is the same. He also submitted that there was no intention on the part of the applicant to commit murder. He also submitted that during the trial the applicant was on bail and at no point of time he has misused the liberty granted to him. He, therefore, submitted that the present application be considered favourably.

7. *Per contra*, learned Additional Public Prosecutor Shri T.A.Mirza for the State vehemently opposed the plea for grant of bail. He submitted that there are two eyewitnesses in this prosecution case. He also submitted that there is recovery at the behest of the applicant and Chemical Analyzer's Report shows blood on clothes of the applicant as well as on weapon. He, therefore, submitted that the application be rejected.

8. After considering evidence of Kailash Ingale (PW4), in the light of statement made by Gunjabai (PW1), in her cross-examination which is recorded at paragraph No.9 of her deposition, *prima facie* we are unable to accept the submission made on behalf of learned Additional Public

Prosecutor for the State that he can be termed as eyewitness. Thus, at the time of consideration of the present application for grant of bail, his testimony cannot be considered as testimony of eyewitness.

9. Gunjabai (PW1) is widow. Though learned counsel for the applicant tried to canvass before us that whether Gunjabai is the lady who has given the First Information Report, since oral report (Exhibit-42) depicts name of Bhuljabai, at this stage the Court need not go into controversy since it can be decided when the appeal will be taken up for its final hearing.

10. Be that as it may, incident has occurred on 18.6.2021. Evidence of Gunjabai shows that the applicant demanded Rs.500/- from the deceased and that ensued altercation between them and in that altercation the applicant assaulted on Shriram, resulting into injury to his head. It appears that the applicant has taken to hospital where treatment was given but unfortunately during the treatment he passed away.

11. Sy.Numan Husaini (PW9) is doctor, an Associate Professor (Department Forensic, Government, Medical College), Rajnandgaon, at the time when his evidence was recorded. However, on 22.6.2011 he was discharging his duties as an Assistant Profession, Department of Government Medical College, Akola. He performed postmortem. Postmortem Report is proved. The said postmortem report is at Exhibit-75. According to opinion of

the doctor, death is due to “*Cranio Cerebral*” injury that is injury on his head.

12. Genesis, as brought on record, shows that there was altercation and in that altercation Shriram was assaulted. *Prima facie*, that does not show that the applicant was having any intention to kill Shriram. In our view, it is quite possible that offence can be scaled down for lesser offence.

13. The applicant was on bail during Trial and at no point of time he has misused the liberty granted to him in his favour. Similarly, there is no criminal antecedents at his discredit.

14. The aforesaid discussion allows us to consider the application filed on behalf of the applicant favourably. Hence, we pass following order:

ORDER

(1) The criminal application is allowed.

(2) Judgment and order dated 11.4.2018 passed by learned Additional Sessions Judge, Akola in Sessions Trial No.154/2011 convicting the applicant for offence punishable under Section 302 of the Indian Penal Code shall remain suspended during the pendency of the appeal.

(3) The applicant be released on bail on he execution a P.R.Bond in the sum of Rs.5000/- with one solvent surety of the like amount.

(4) Learned Judge before whom the bail bonds will be executed shall ensure that before issuing warrant of release the applicant has deposited the fine amount.

The criminal application stands disposed of accordingly.

JUDGE

JUDGE

!! BRW !!

...../-