

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 877 OF 2021 IN
CRIMINAL APPEAL NO. 194 OF 2021**

Balaji s/o Navnath Sarvade

Applicant

Versus

The State of Maharashtra

Respondent

Mr. M. V. Salunke, advocate for the applicant
Mr. S. S. Dande, APP for the Respondent.

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 13th January, 2022.

PC :

1 By consent of learned Counsel for respective parties, this application is heard finally at the stage of admission.

2 The applicant has preferred an appeal against the judgment and order dated 20.03.2021, passed by the Additional Sessions Judge, Osmanabad, in Sessions Case No. 74 of 2016, convicting the applicant-accused for the offences

punishable under Sections 302 and 504 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.3000/-, in default, to suffer simple imprisonment for three months, for the offence punishable under Section 302 of IPC; and to suffer rigorous imprisonment for one year with fine of Rs.500/-, in default, to suffer simple imprisonment for one month, for the offence punishable under Section 504 of IPC.

3 The applicant has preferred instant application for suspension of substantive part of the sentence and for releasing him on bail, during the pendency of appeal.

4 Learned Counsel for the applicant-accused submits that the applicant-accused was on bail during trial. The alleged offence has been committed in the spur of moment without any premeditation. Further, the applicant accused has not used any deadly weapon in the alleged incident and while making assault on the deceased, he has used bamboo stick. Though there are seven injuries on the

person of the deceased, however, only two injuries are on the head, one is abrasion and injury no.7 is only vital. The learned Counsel submits that there is no instantaneous death. There is no intention to commit murder. At the most, it is a case of culpable homicide.

5 The learned A. P. P. submits that there is eye witness to the incident and the daughter of the deceased has witnessed the applicant-accused extending severe beating to the deceased with the help of stick, as a result of which, deceased had sustained bleeding injuries on his head. Though he was immediately shifted to the hospital, however, due to corresponding internal injuries on the head, he died. It is a clear case of murder. The application is liable to be rejected.

6 We have carefully gone through the paper book, particularly evidence of P. W. 2 Vaishali, examined by the prosecution, who is the only eye witness to the incident. It further appears from the evidence of P.W.1 Devidas, who

happened to be son of the deceased, to whom P. W. 2 Vaishali had immediately reported that accused-Balaji was sleeping in the Hanuman temple and deceased Baburao gone there and woke up the applicant. Thus, the applicant-accused got annoyed and quarrel took place between him and the deceased. In the said quarrel over trifle issue, without any premeditation, in a spur of moment, the applicant-accused allegedly given blows of bamboo stick on the head of the deceased. Further, the applicant-accused was on bail during trial. Thus, considering entire aspects of the case, we are inclined to release the applicant on bail during the pendency of appeal.

7 Hence, we pass the following order:

(i) Criminal Application is hereby allowed.

(ii) Pending Criminal Appeal No.194 of 2021, preferred against the judgment and order dated 20.03.2021, passed by the Additional Sessions Judge, Osmanabad, in Sessions Case

No. 74 of 2016, convicting the applicant-accused for the offences punishable under Sections 302 and 504 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.3000/-, in default, to suffer simple imprisonment for three months, for the offence punishable under Section 302 of IPC; and to suffer rigorous imprisonment for one year with fine of Rs.500/-, in default, to suffer simple imprisonment for one month, for the offence punishable under Section 504 of IPC, the substantive part of the sentence is hereby suspended and the applicant-accused – Balaji Navnath Sarvade be released on bail on furnishing P. R. bond of Rs.20,000/- (Rs. Twenty thousand) with one solvent surety in the like amount.

(iii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

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