

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

**CRIMINAL APPLICATION NO. 1325 OF 2022
IN
CRIMINAL APPEAL NO. 288 OF 2022**

Kalpesh Amrut Gavit

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. R.S. Shinde, Advocate h/f Mr. D.S. Bagul, Advocate for applicant
Mr. A.M. Phule, A.P.P. for respondent - State

....

**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.
DATE : 12th OCTOBER, 2022**

PER COURT :

1. By this application, the applicant is seeking suspension of sentence imposed vide judgment and order dated 09th March, 2022 in Sessions Case No. 36 of 2020 in which he was convicted for the offences punishable under Sections 302 and 504 read with Section 34 of the Indian Penal Code (I.P.C.). The applicant is sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month under Section 302 of the I.P.C. and sentenced to suffer simple imprisonment for two months and to pay fine of Rs.500/-, in default to suffer simple imprisonment for fifteen days under Section 502 read with Section 34 of the I.P.C..

2. Heard. Issue notice to the respondent. Learned A.P.P. waives service of notice for respondent – State.

3. Learned counsel for the applicant submits that it is not a case wherein intention of the accused to kill the deceased can be seen. He also drew attention of this Court to the postmortem notes indicating there are no external injuries on the body of the deceased and there is only one internal injury. There is also no mention as to whether the injuries in question were antemortem or postmortem. Accordingly, he seeks suspension of sentence.

4. Learned A.P.P. vehemently opposed the said contention with submission that the trial Court, after completing trial, has convicted the accused for the serious offence under Section 302 of the I.P.C. by taking into consideration material facts on record and hence it is not the case to suspend the sentence.

5. Prima facie perusal of the case shows that the incident in question has occurred wherein there was quarrel and beating is received by other witnesses too. The independent witness does not claim that the assault was caused on the deceased by the present applicant. Rest of the accused are acquitted of the offence punishable under Section 302 of the I.P.C. There is arguable case made out as to whether there was intention on the part of the

applicant to kill the deceased or whether he was author of the injuries in question.

6. In these facts and circumstances of the case, we inclined to allow the application as under :-

ORDER

(i) Criminal application is allowed.

(ii) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is suspended. The applicant be released on bail on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) Bail before the trial Court.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD