

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

CRIMINAL APPLICATION NO.1602 OF 2022
IN APEAL/356/2022 WITH APEAL/356/2022 WITH
APEAL/363/2022 WITH APPLN/2506/2022 IN APPLN/1602/2022

JAVED MUKHTAR SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

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Mr. A.B. Girase, Advocate for the Applicant.
Mr. S.P. Sonpawale, APP, for the Respondent – State.
Mr. S.A. Kulkarni, Advocate for Respondent No. 2.

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**CORAM : R.G. AVACHAT &
R.M. JOSHI, JJ**

DATE : DECEMBER 21, 2022.

PER COURT :

1. Applicant – Javed is seeking suspension of substantive sentence of life imprisonment imposed against him in Sessions Case No. 52/2017 by impugned judgment and order.

2. Learned Advocate for the Applicant submitted that there is absolutely no evidence on record to show that present Applicant used any weapon in causing assault on deceased or injured. It is submitted that specific role has been assigned to the co-accused for committing the said assault and accepting the case of prosecution as it is, present Applicant could not have

been said to have committed offence punishable under Section 302 of IPC.

3. Learned APP and learned Advocate for Respondent No. 2 – Informant opposed the said contention by pointing out testimonies of Syed (PW 1), Sajid (PW 3) Wasim (PW 4) and Tausif (PW 6). According to them, present Applicant has equally participated in the assault and there is specific evidence about he assaulting deceased Saddam with fist and kick blows. Thus, according to them, this accused is rightly convicted with the aid of Section 34 of IPC by the trial Court and no case is made out for suspension of sentence.

4. It is seen from *prima facie* consideration of evidence on record that present Applicant had no weapon with him nor any allegation of assault with any weapon is attributed to him. Applicant is in jail for about five years and having regard to his role as it *prima facie* appears from record, we are inclined to suspend substantive sentence imposed against him by impugned judgment. Hence, the following order:

ORDER

(a) Criminal Application is allowed in terms of prayer clause 'c'.

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

(c) Bail before the trial Court.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

Malani