

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

CRIMINAL APPLICATION NO.2027 OF 2020
WITH APEAL/590/2020

CHANDRAKANT S/O. NAVNATH KAMBLE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Swapnil S. Dargad, Advocate for the Applicant.
Mr. R.V. Dasalkar, APP for the Respondent – State.

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

DATE : NOVEMBER 16, 2022.

P. C. :

1. Heard learned Counsel for the Applicant and learned APP for Respondent-State.
2. It is submitted that the incident in question indicates that accused had no intention to kill the deceased. As per the case of prosecution dispute was with the informant and there was incident of abuses and assault. Taking the case of the prosecution as it is even otherwise Section 302 of Indian Penal Code would not attract in the present case.
3. Learned APP opposes said submissions pointing out the testimonies of the eye witnesses who had specifically stated that assault being caused by the present Appellant on deceased with axe.
4. At this stage, *prima facie* considering material on record there is

nothing to indicate that Applicant had intention to kill deceased since beginning. At the most, it can be said that Applicant along with co-accused who are acquitted by the learned Trial Court had been to the spot for the purpose of beating / assault informant and deceased seems to have intervened in the said assault and in that process the possibility of causing of injury to him cannot be ruled out. In any case, there is substance in the contention of learned Counsel appearing for Applicant that it may not be a case of conviction under Section 302 of Indian Penal Code and it's gravity can be scaled down. There are no criminal antecedents reported against the Applicant.

5. The applicant is in jail since four years. The appeal is not likely to come up for final hearing in the near future. We, therefore, are inclined to allow the application as under:-

ORDER

- (i) Criminal application is allowed in terms of prayer clause 'B'.
- (ii) 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.
- (iii) Bail before the trial Court.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)