

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

CRIMINAL APPEAL NO.131 OF 2018
WITH
CRIMINAL APPLICATION NO. 2588 OF 2022
IN
CRIMINAL APPEAL NO. 131 OF 2018

SWAPNIL RAMESH DHAWALE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Abhay Ostwal, Advocate for the Appellant.
Mr. S.P. Sonpawale, APP, for the Respondent – State.

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

DATE : DECEMBER 13, 2022.

PER COURT :

1. After hearing learned Advocate for the Appellant and learned APP for substantial time, we find substance in the contention of learned Advocate for the Appellant that Appellant herein could not get fair opportunity to defend himself more particularly, after his lawyer midway left trial and thereafter he was represented by legal aid Counsel appointed by the Trial Court.

2. From perusal of evidence of Dr. Shrikant Chandrakant Pathak (PW 9), Medical Officer, Abhishek

Palve (PW 10), Recovery Panch and Rahulkumar Pawar (PW 11), Investigating Officer and in particular their cross-examination, we find that from stage of examination of these witnesses, trial is not conducted properly on behalf of defence. Considering the seriousness of the charge, Appellant had every right to get his proper and effective representation before the Trial Court, which is found lacking herein this case. Thus, it is a fit case wherein these witnesses are required to be offered for further cross-examination and re-examination thereafter, if any by prosecution, to meet ends of justice. We hereby direct to send record and proceedings of Sessions Case No. 214 of 2015 to the trial Court to complete this exercise within six months and to send back the record to this Court for decision of appeal.

3. At the instance of this Court, learned Advocate for the Appellant had sought consent of Adv. Satishchandra Sudrik to appear on behalf of Appellant before the Trial Court for the purpose of conducting cross-examination of above three witnesses. He is, therefore, requested to represent Appellant before the

Trial Court.

4. All concerned to comply above directions.

5. It is informed to this Court that Appellant is in jail since more than six years. At the time of incident, he was aged about 19 years. In the facts and circumstances, we find it appropriate to suspend his substantive sentence of imprisonment. Hence, the following order:

ORDER

(a) Criminal Application no. 2588 of 2022 is allowed in terms of prayer clause 'b'.

(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.)