

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

**CRIMINAL APPLICATION NO. 3587 OF 2022
IN
CRIMINAL APPEAL NO. 794 OF 2022**

Samadhan Tukaram Dhangar .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Satej S. Jadhav, Advocate for the Applicant.

Mr. Y. G. Gujarathi, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 22nd DECEMBER, 2022.

P. C. :-

1. Heard learned advocate for the applicant and learned A.P.P and perused record.

2. This application is filed seeking suspension of sentence and release of the applicant on bail in connection with conviction recorded and sentence awarded by the learned Sessions Judge, Jalgaon by the judgment dated 29.09.2022 in S.C. No. 94/2016. The applicant is held guilty for the offence punishable under Section 304 Part II of the Indian Penal Code (for short "I.P.C.") and is sentenced to suffer six (06) years rigorous imprisonment and to pay fine of Rs. 1,000/- (Rs. One Thousand only) and in default of payment of fine, to undergo rigorous

imprisonment for three (03) months. The accused was on bail during the trial. He has paid the fine amount of Rs. 1,000/- (Rs. One Thousand only) on the date of judgment itself. During trial, he was on bail throughout. The prosecution was lodged against three persons that is this accused, his mother and father. Father – Tukaram is no more. The applicant is acquitted of the offences punishable under Sections 323, 504 and 506 r/w Section 34 of the I.P.C. The learned Trial Court held the accused guilty only for the offence punishable under Section 304 Part II of the I.P.C.

3. It is argued by the learned advocate for the applicant that, except PW-7 there is no evidence or witness who has deposed against the accused person. The story of the prosecution is that the sister namely Sarala @ Guddi was taken by the deceased and her husband for agricultural work. When they were passing through the field of this applicant, he saw that his sister is being taken by the husband of deceased with them, at that time he told them not to take his sister for any work. While saying that he has assaulted the deceased by stick. The deceased died after three days. It is submitted that, there is only single blow. There was no intention to commit a murder. The learned Trial Court held the applicant guilty only for the offence punishable under Section 304 Part II of the I.P.C. and has also shown leniency by

awarding sentence of only six (06) years. It is further submitted that, taking into consideration the pendency of the matters, the appeal is not likely to be heard in near future. He further prays for release on bail of the applicant and suspension of sentence.

4. The application is vehemently opposed by the learned A.P.P. He submits that merely because there is one injury does not lead to a conclusion that there was no intention to commit murder. It depends upon the seriousness of the injury, the gravity and the force used while causing injury. He submits that though in the P.M. notes in column No. 17 no external injury found, however, intra-cranial injury is found which shows that the blow was fatal.

5. Considering the above submissions, it is seen that the sentence is only of six (06) years. The appeal may not reach for final hearing in near future. It would be desirable to release the applicant on bail by suspending substantive sentence. It also needs to be considered that from the date of judgment, the applicant is in jail. Hence, the following order.

ORDER

(I) The applicant shall be released on bail on furnishing P.R. bond and solvent surety in the amount of Rs. 15,000/- (Rs. Fifteen Thousand only).

(II) The substantive sentence awarded by the learned Sessions Judge, Jalgaon by order dated 29.09.2022 in S.C. No. 94/2016 shall remain suspended.

(III) The criminal application is disposed off.

(KISHORE C. SANT, J.)

PS.B.