

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

**CRIMINAL APPLICATION NO.3829 OF 2022
IN CRIMINAL APPEAL/361/2022**

**MILIND DEVIDAS KAMBLE
VERSUS
THE STATE OF MAHARASHTRA**

Mr.S.J.Salunke, Advocate for applicant
Mr.S.P.Sonpavale, APP for respondent

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

ORDER :-

Heard learned counsel for the parties.

2. Learned counsel for the applicant submits that in the evidence of the alleged eye witness, it has come on record that there was one unknown person, who has also assaulted the deceased. By referring to the cross-examination of PW 1 - Prayagbai, learned counsel argued that from her testimony, it could be seen that no one has witnessed the said incident. Thus, the testimony of other witnesses became doubtful.

3. Learned APP opposed the said contention and sought dismissal of the application considering the material on record.

4. Consideration of the evidence on record, at this stage, indicates that no doubt, one unknown person is claimed to have assaulted the deceased with weapon but in the test identification parade, he is found to be the present applicant. Thus, we do not find any reason for not accepting the prosecution case at this stage, that the said unknown person was the appellant herein. There is recovery of blood stained weapon at his instance and it could be connected with the injuries caused to the deceased.

5. Having regard to the evidence showing involvement of the appellant in the actual assault, we are not inclined to suspend the execution of the substantive sentence. As such, the application is rejected.

[R.M. JOSHI, J.]

[R.G. AVACHAT, J.]

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