

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

**CRIMINAL APPLICATION NO. 3966 OF 2022
IN
CRIMINAL APPEAL NO. 922 OF 2022**

Gopal Ganesh Kadam

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. B.N. Magar, Advocate for applicant

Mr. R.V. Dasalkar, A.P.P. for respondent – State

Mr. S.S. Jadhavar, Advocate for assist to A.P.P.

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

DATE : 16th DECEMBER, 2022

PER COURT :

1. This is an application for suspension of substantive sentence of imprisonment passed by the learned Additional Sessions Judge, Basmathnagar in Sessions Case No. 42 of 2016 vide judgment and order dated 23rd March, 2022. The applicant has been convicted for the offences punishable under Section 302, 307, 323, 143, 147, 148 read with Section 149 of the Indian Penal Code (I.P.C.).

2. Heard. Issue notice to the respondent. Learned A.P.P. waives service of notice for respondent – State.

3. By this application the applicant is seeking suspension of sentence and bail on the ground that the incident in which the deceased died there occurred counter attack between the parties and the deceased died with single blow on his stomach. According to him, the applicant cannot be said to have carried intention to kill the deceased and the possibility of occurrence of the incident at the spur of the moment cannot be ruled out.

4. Learned A.P.P. and learned counsel for the informant opposed said submissions. According to them, the use of knife in the assault itself is sufficient to indicate the intention of the applicant to kill the deceased. It is argued that since the present applicant is responsible for causing death of the deceased, his application for suspension of sentence be rejected.

5. At this stage, consideration of material evidence on record indicates that there was fight between the rival groups, which can be seen from the number of injuries caused to the applicant as well as co-accused. As far as the causing of stab injury to the deceased is concerned, he died of the said single injury and in the facts of the case, we find that appellant may be in a position to make out case at final hearing applicant that at the time of occurrence of the incident, the applicant had no intention to kill the deceased.

6. The applicant is in jail since 2016. At the time of incident, he was twenty-two years of age, with no other crime recorded against him. In the aforesaid circumstances and as the appeal is not likely to come up for final hearing in the near future, we 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.)

SSD