

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 95 OF 2022
IN
CRIMINAL APPEAL NO.1042 OF 2021**

Ashfak Islam Khan @ Kallu

...Applicant/
Appellant

Versus

State of Maharashtra

...Respondent

....

Mr. Nitin Sejpal, Advocate for the Applicant/Appellant.

Mr. S. V. Gavand, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 19th JANUARY, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail pending criminal appeal No. 1042 of 2021.
2. The applicant has been convicted for the offence under Section 304(Part I) of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for 10 years with fine of Rs.2,10,000/-.
3. The accused Nos. 2 and 3 were convicted for offence under Section 324 of IPC and sentenced to suffer rigorous imprisonment for 3 years with fine of Rs.5,000/-.

4. The case of the prosecution is that on 20th August, 2016 the tempo driver Mustak Ahmad Khan was driving his tempo and taking it in reverse direction. During the process the tempo hit the plastic drum kept in front of shop of the accused No.1. Therefore, the applicant assaulted Mustak Ahmad by Bami. The co-accused were involved in assaulting another person. The accused were prosecuted for offence under Section 302 of IPC, however, the trial Court has held that the accused No.1 (applicant) could be convicted for offence under Section 304(Part I) of IPC.

5. The observations of the trial Court in Para-180 of the impugned judgment indicate that the incident had occurred during the sudden quarrel under heat of passion.

6. It is noted that the applicant is in custody for a period of about 5 years and 5 months. The co-accused were convicted for offence under Section 324 of IPC. Their sentence of imprisonment has been suspended and they have been granted bail. Learned counsel for the applicant had submitted that there are no criminal antecedents against the applicant.

7. Learned APP submitted that the applicant was prosecuted for offence under Section 302 of IPC, however he

has been convicted for offence under Section 304 (Part-I) of IPC. There is sufficient evidence against the applicant.

8. Considering the fact that the applicant has been convicted for offence under Section 304(Part I) of IPC and he has undergone custody for 5 years and 5 months, and taking into consideration the fact that incident had occurred by sudden quarrel without premeditation in the heat of passion. sentence of imprisonment can be suspended.

9. Hence, I pass the following order:

ORDER

- i. Interim Application No. 95 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No. 1042 of 2021, the sentence of imprisonment imposed vide judgment and order dated 7th December, 2021 passed by learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.439 of 2016 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant shall deposit the compensation amount of Rs.2,10,000/- at the time of execution of bail bond.

iv. The release of applicant on bail is subject to condition that the compensation amount of Rs.2,10,000/- is deposited before the trial Court.

v. The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of ten weeks in lieu of surety.

vi. The applicant shall attend the trial Court once in six months on first Saturday of the month between 11.00 a.m. to 1.00 p.m.

vii. In the event there are two consecutive default to attend the trial Court, the prosecution will be at liberty to move an application for cancellation of bail.

viii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)