

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

**INTERIM APPLICATION NO. 353 OF 2022
WITH
INTERIM APPLICATION NO. 354 OF 2022
IN
CR. APPEAL NO. 84 OF 2022**

David Anthony Kaundar	...Applicant/ Appellant
Versus	
The State Of Maharashtra And Anr.	...Respondents

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Mr. Rishi Bhuta i/by Ms. Ankita Bamboli, Advocate for the
Applicant/Appellant.

Mr. Ajay Patil, APP for the Respondent – State.

CORAM	:	PRAKASH D. NAIK, J.
DATE	:	14th FEBRUARY, 2022.

PER COURT:

1. These are the applications for suspension of sentence and grant of bail. The applicant is convicted for offence punishable under Section 325 Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for a term of seven years with fine of Rs.1,00,000/-. The appeal preferred by the applicant has been admitted by this Court and it is pending for final disposal.

2. Learned counsel for the applicant submitted that the applicant was on bail during the trial. He has not misused the facility of bail. Although he was charged for offence under

Section 302 of IPC, he was convicted for offence under Section 325 of IPC. There are discrepancies in the evidence. The sentence is of 7 years. The assault is by wooden log. He is in custody from 28th December, 2021. The incident is of 10th August, 2012. The victim died on 21st August, 2012.

3. Learned APP submitted that, on account of assault attributed to the applicant the victim has died. The offence is serious. There is sufficient evidence to convict the applicant. The trial Court has assigned reasons for conviction under Section 325 of IPC.

4. The incident in question had occurred on 10th August, 2012. The case of the prosecution is that the accused initially assaulted the deceased by fist and kick blows. PW-5 intervened to resolve the quarrel. The accused picked up wooden bamboo lying at the spot and inflicted the blow on the front side of the head causing bleeding injury to his head.

5. The deceased was admitted to hospital on 10th August, 2012 and after undergoing treatment he was discharged on 17th August, 2012. He was again admitted to hospital on 20th August, 2012 and he died on 21st August, 2012. The trial Court has observed that there is medical opinion on record to show that the injuries were sufficient to

cause death in ordinary course of nature. The accused cannot be expected to have knowledge that death was likely to be caused due to single blow of the stick. The accused cannot be said to have even performed the act with the knowledge of likelihood of causing death. Thus, the act of the accused cannot fall within the ambit of either Section 300 or Section 299 of IPC. The prosecution could not establish either causing of murder or the causing of culpable homicide, not amounting to murder. It was further observed that even Section 326 of IPC would not be applicable and the case would at the most within the ambit of Section 325 of IPC. The applicant was on bail during the trial. In the light of the factual aspects of this matter, the sentence of imprisonment can be suspended.

6. Hence, I pass the following order:

ORDER

- i. Interim Application Nos. 353 of 2022 and 354 of 2022 are allowed;
- ii. During the pendency of Criminal Appeal No.84 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 28th December, 2021 passed by learned Additional Session Judge, Borivali Division,

Dindoshi, Mumbai in Sessions Case No.186 of 2012 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 is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of ten weeks in lieu of surety.

iv. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;

v. In the event, there are two consecutive default in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.

vi. Interim Applications are disposed of accordingly.

(PRAKASH D. NAIK, J.)