

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

**INTERIM APPLICATION NO. 3300 OF 2021
IN
CRIMINAL APPEAL NO. 1049 OF 2021**

Bhausahab Murlidhar Jadhav ...Applicant/
Appellant

Versus

The State Of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO. 230 OF 2022
IN
INTERIM APPLICATION NO. 3300 OF 2021**

Annasaheb Balu Waghmode ... Applicant
/Intervenor

IN THE MATTER BETWEEN :-

Bhausahab Murlidhar Jadhav ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Satyavrat Joshi a/w Ms. B. Vilasini i/by Mr. Jaydeep D.
Mane, Advocate for the Applicant/Appellant in IA 3300 of 2021.

Mr. Chaitnya S. Sakhare, Advocate for the Applicant in Interim
Application no. 230 of 2020.

Mr. S. H. Yadav, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 22nd FEBRUARY, 2022.**

PER COURT:

1. Interim Application No.3300 of 2021 is preferred
by the appellant in Criminal Appeal No.1049 of 2020 seeking

suspension of sentence and grant of bail during the pendency of appeal. Whereas Interim Application No. 230 of 2022 is preferred by the first informant/injured /compensation party opposing the application for suspension of sentence.

2. The applicant is convicted for offence under Section 326 of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-. He is also convicted for offence under Section 506 of IPC and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-. Both the sentences were directed to run concurrently.

3. Learned Advocate for the applicant submitted that the maximum sentence imposed by the trial Court vide judgment and order dated 24th November, 2021 is for a period of three years. The applicant was on bail during the trial. On the date of conviction the trial Court has suspended the sentence and directed that the applicant be released on bail to enable him to prefer appeal before the High Court in accordance with Section 389(3) of Cr.P.C. It is further submitted that the applicant has good case on merits and the judgment of the trial Court has been challenged on several grounds.

4. Learned APP submitted that there is sufficient evidence to convict the applicant under Sections 326 and 506 of IPC. The injured was assaulted by using weapon.

5. Learned counsel for the intervenor in Interim Application No. 230 of 2022 submitted that the applicant has been acquitted for offence under Section 307 of IPC. The evidence on record establishes the offence under Section 307 of IPC. The knowledge required to constitute an offence under Section 307 is apparent from the evidence on record. The trial Court has committed an error in acquitting the accused for offence under Section 307 with observation that intention is necessary. The evidence of injured witness and the medical evidence clearly establishes that there is attempt to commit murder. The victim had dodged the assault by putting his hand forward which resulted in injury to his hand but for that the injured would have been killed. The evidence of the witnesses on record is sufficient to convict the applicant for offence under Section 307 of IPC. The complainant has challenged the acquittal of the accused for offence under Section 307 by preferring an appeal under Section 372 of Cr.P.C. which is pending before division bench of this Court. It is further submitted that, on the ground that the applicant

was on bail during the trial and sentence is of short term applicant is not entitled to be released on bail. Reliance is placed on the decisions of the Apex Court in the Case of Kishori Lal V/s. Rupa and Others AIR 2005, SC 1481; Kanaka Rekha Naik v/S. Manoj Kumar Pradhan and Anr. 2011 CRI.L.J. 1113 and Sachin Gajanan Shetye V/s. State of Maharashtra 2011 CRI.L.J. 132. It is submitted that while granting bail to the applicant, condition was imposed that the applicant shall stay out of Village Kurul. However, there was breach of the said condition and hence, FIR has been registered against the applicant on 27th July, 2019 with Kamati Police Station, Dist. Solapur (Rural) under Section 188 of IPC. It is submitted that the applicant had initially preferred an application for anticipatory bail before this Court and interim relief was granted to him. During the pendency of interim relief, the applicant had threatened the complainant and therefore N.C. Complaints were lodged against him on 29th January, 2018 and 24th August, 2019.

6. In rejoinder, learned counsel for the applicant submitted that the decisions relied upon by the learned counsel for the intervenor are not applicable in this case. The accused therein was convicted for serious offence. The

applicant has been convicted for offence under Sections 326 and 506 of IPC. Fine imposed by the trial Court has been deposited. The applicant was on bail during the trial. He has undergone sentence of about eight months. It is further submitted that Section 188 of IPC would not be applicable for alleged committing the breach of order of the Court. At the most prosecution could preferred application for cancellation of bail which is not done. Section 188 of IPC is applicable for disobedience to order promulgated by public servant. The appeal would not come up for hearing shortly. In the event sentence is not suspended, appeal would become infructuous. N.C. complaints were false.

7. Undisputedly, the applicant has been convicted for offence under Section 326 of IPC. The sentence is of three years. The applicant was on bail during the trial. The sentence was suspended on the date of conviction. The medical evidence discloses that the injury was caused to hand. Whether the offence under Section 307 is attracted would be subject matter of appeal preferred by the complainant at appropriate stage. Considering these circumstances, case for suspension of sentence is made out.

8. Hence, I pass the following order:

ORDER

- i. Interim Application No. 3300 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.1049 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 24th November, 2021 passed by learned Additional Sessions Judge, Solapur in Sessions Case No.88 of 2018 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. The applicant shall stay out of Village Kurul till further orders;

vii. Interim Application Nos. 3300 of 2021 and 230 of 2022 are disposed off accordingly.

(PRAKASH D. NAIK, J.)