

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 341 OF 2022
IN
CRIMINAL APPEAL NO. 284 OF 2022

Sambha @ Bandu Vithu Bawane -- Appellant

Vs.

State of Maharashtra through P.S.O., Shegaon -- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Mahesh Rai, Advocate for Appellant
Mr. A.S. Fulzele, APP for Respondent

CORAM : MANISH PITALE AND
G.A. SANAP, J.J.

DATE : 19th AUGUST, 2022

This is an application seeking suspension of sentence and grant of bail filed on behalf of the applicant. That, the appeal was admitted on 04/04/2022 and it is directed that the present application may be considered after receipt of the record and proceedings. The record and proceedings have been received.

2. Mr. Rai, learned counsel appearing for the applicant submitted that in the present case, there is only one alleged eye witness and the evidence of all other witnesses is based on hearsay. It is submitted that even the evidence of the eye witness

P.W.1 indicates that the applicant could not be convicted for the death of the victim. It is submitted that the Sessions Court was more affected by the fact that the applicant could be brought to the trial after about 23 years of the incident. It is further submitted that the alleged weapon of offence i.e. axe was also not recovered from the applicant and, therefore, the applicant has strong *prima facie* case in the appeal pending before this Court.

3. The learned Assistant Public Prosecutor invited attention of this Court to the relevant portion of the impugned judgment and order and he submitted that in the statement of PW 1 recorded at the time when the applicant was absconding, demonstrated involvement of the applicant in detail and that the aforesaid material was correctly taken into consideration by the Sessions Court while convicting and sentencing the applicant. It was submitted that, therefore, the application deserves to be dismissed.

4. We have perused the impugned judgment and order passed by the Sessions Court. We have also perused the evidence of P.W.1, who according to the prosecution was the only eye witness to the incident. A perusal of evidence of P.W.1 does not indicate that he has implicated the applicant in any manner, although he has described the injuries suffered by the victim and the fact that he did report the matter to the police. Although, the said witness was confronted with his statement given to the police after the incident and the said witness was also cross-examined, the lone

eye witness in the present case appears to be not supporting the prosecution version. Depositions of all other witnesses are based on hearsay. The weapon of assault is also not recovered and other aspects of the matters, including medical evidence have been appreciated in the impugned judgment and order, but, it appears that much emphasis was placed on the fact that the appellant was absconding for 23 years.

5. In view of the material brought to the notice of this Court, we are of the opinion that prima facie case is indeed made out by the appellant in his favour and hence, the application deserves to be allowed.

6. Accordingly, the application is allowed. Sentence imposed by the Sessions Court is suspended during pendency of the appeal and appellant is directed to be released on bail on furnishing PR bond of Rs.25,000/- and surety in the like amount to the satisfaction of trial Court.

(G.A. SANAP, J.)

(MANISH PITALE, J.)