

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

CRIMINAL APPLICATION NO. 833 OF 2023
IN
CRIMINAL APPEAL NO. 187 OF 2018

Apparao s/o Pundlik Bhurke,
Age : 57 years, Occ. Labour,
R/o. Kusalwadi, Tal. Hadgaon,
Dist. Nanded.

...Applicant

Versus

The State of Maharashtra,
through the Police Station, Manatha,
Dist. Nanded.

...Respondent

.....
Mr. Satish A. Gaikwad – Advocate for the applicant
Mr. A. V. Deshmukh – APP for respondent/State
.....

CORAM : SMT. VIBHA KANKANWADI
AND
ABHAY S. WAGHWASE, JJ.

DATED : 26TH JULY, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] : -

1. Present application is the second application for suspension of sentence.

2. The present applicant has been convicted by the learned Additional Sessions Judge-1, Nanded on 22.02.2018 in Sessions Case No. 67/2015, after he has been held guilty of offence punishable under Section 304 Part 1 of the Indian Penal Code. He has been sentenced to

suffer rigorous imprisonment for 10 years and pay fine of Rs. 3,000/-, in default, to suffer rigorous imprisonment for six months.

3. Heard learned advocate Mr. Satish A. Gaikwad for the applicant and Mr. A. V. Deshmukh for respondent/State.

4. It has been vehemently submitted on behalf of the applicant/appellant that the prosecution case was that the applicant had seen his wife and one Gangadhar Dukare in compromising position and, thereafter, Gangadhar had given blow of knife to the accused but, during the scuffle, the knife fell on the ground and said Gangadhar fled away from the spot and then accused picked up the said knife and assaulted his wife Chandrakalabai. Later on, the wife succumbed to the injuries. Though initially the trial was for the offence punishable under Section 302 of the Indian Penal Code, the learned Additional Sessions Judge convicted the appellant for the offence punishable under Section 304 Part 1 of the Indian Penal Code. Now the position stands that the appellant was not released on bail during the trial and he was arrested on 17.03.2015. Therefore, as on today, he has undergone around 5 years of imprisonment when he has been sentenced to suffer rigorous imprisonment for 10 years. The appeal filed by the applicant/appellant would have been in normal course before the Single Judge, however, the State has filed appeal i.e. Criminal Appeal No. 328 of 2018 and the informant i.e. relative of the deceased – Maruti Somaji Kale has filed

Criminal Appeal No. 435 of 2018 under Section 377 and 372 of Code of Criminal Procedure, respectively. Both these appeals have been admitted and, therefore, the matter is before the Division Bench. It will take long time to decide the matter. The applicant was released on Covid bail and he has promptly reported back to the Jail. Therefore, case is made out for suspension of sentence during the pendency of the appeal.

5. Per contra, learned APP strongly opposed the application and submitted that, earlier application has been rejected by the Division Bench of this Court by order dated 17.07.2018, wherein it was observed by this Court that 'prima facie, the findings recorded by the trial court are in consonance with the evidence brought on record'. Now it is the question as to whether offence has been proved under Section 302 of the Indian Penal Code, or as it is held by the Trial Court Judge, under Section 304 Part 1 of the Indian Penal Code. The appeals filed by the State as well as the informant are admitted. Under such circumstance, though the appellant has undergone 5 years of imprisonment, this cannot be taken as a fit case where he should be released on bail by suspending sentence.

6. As aforesaid, the earlier application for suspension of sentence filed by the present applicant has been rejected by the Division Bench of this Court vide order dated 17.07.2018. Therefore, this Court

cannot review its own observations or reconsider the same. No doubt, the Trial Court has sentenced the applicant to suffer rigorous imprisonment for 10 years by holding that the offence that has been proved is under Section 304 Part 1 of the Indian Penal Code and the applicant has undergone 5 years of imprisonment but, the fact remains that the appeals filed by the prosecution and the informant for enhancement and for challenging acquittal of applicant from the offence punishable under Section 302 of the Indian Penal Code have been admitted and, therefore, no extra consideration can be given. The present Division Bench is hearing the Jail Appeals of 2016 and may take up this appeal also in near future. Therefore, no case is made out for releasing the applicant on bail by suspending the sentence.

7. Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE