

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1788 OF 2023
IN APEAL/419/2023 WITH APEAL/419/2023

BALU HARIBA WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Avinash R. Borulkar
APP for Respondent : Mr. K. S. Patil
...

CORAM : S. G. MEHARE, J.

DATE : 10-07-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant has been convicted to suffer rigorous imprisonment for six years and fine of Rs.1000/- for the offence punishable under Section 304(I) of the Indian Penal Code.
3. The learned counsel for the applicant would submit that the applicant has undergone two years sentence. The applicant has been erroneously held guilty for the offence. There was no material to hold him guilty. The learned trial court did not consider the enmity between the applicant and the accused. The identification test was held belatedly. Therefore, it has no evidential value. However, the Court believed it. The deceased was addicted to liquor and ganja. The applicant has been erroneously convicted. Hence, sentence may be suspended and bail may be granted to him.

4. The learned A.P.P. would submit that the offence against the applicant has been precisely proved. The witnesses are consistent and corroborated with the recovery of the weapon, test identification parade and the role played by the applicant in the crime. The offence is serious. The applicant is undergoing the sentence is no ground to suspend the sentence.

5. Perused the impugned judgment and order.

6. It appears that the deceased was addicted to liquor and ganja. Whether the act of the accused was intending to kill the deceased, is a matter to be considered on merits. There were no complaints against the applicant that he threatened any of the witnesses during the course of trial. Perusal of the impugned judgment and order reveals that many legal issues may fall for consideration. That apart, conviction is for short term. There is no likelihood of final disposal of the appeal in near future. There appear grounds for suspension of sentence. Hence, the order:-

- i) Criminal application is allowed.
- ii) The execution, implementation, effect and operation of the judgment and order passed by the learned Additional Sessions Judge, Latur in Sessions Case No.72 of 2021, dated 27.02.2023, imposing sentence to suffer rigorous imprisonment for six years, is suspended till conclusion of the appeal.
- iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount.
- iv) Bail before the learned Additional Sessions Judge, Latur.
- v) List the criminal Appeal No.419 of 2023 on 28.08.2023.

**(S. G. MEHARE)
JUDGE**