

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

909 CRIMINAL APPLICATION NO.2130 OF 2023  
IN APEAL/541/2019

RAMESH S/O. VENKATI KADAM  
VERSUS  
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. G. P. Shinde  
APP for Respondent-State: Mr. R. B. Bagul

....

**CORAM : SANDIPKUMAR C. MORE, J.  
DATED : 12/10/2023.**

***P. C. :***

1. The applicant, who is original accused No.1, is seeking suspension of his substantive sentence of R. I. for 10 years, i/d S.I. for two months for offence punishable under Section 304(II) of the Indian Penal Code in Sessions Case No.41 of 2015.
2. The learned A.P.P. strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record. Moreover, the learned trial court has already recorded findings that the victim died due to beating by stick and blows and the present applicant was having stick at the time of assault. Thus, according to the learned APP the present applicant had performed main role in the commission of offence. He also pointed out that this is the third application from the applicant / accused as earlier two applications were rejected by this court.
3. As against this, the learned counsel for the applicant pointed out that there were in all three accused but other two accused are already released on bail after suspension of their substantive

sentence, one by this court and other by Hon'ble Apex Court. He further pointed out that the Honn'ble Apex Court had in fact granted liberty to this applicant for either moving the application for bail again or for early hearing of the appeal. According to him, the applicant has already undergone substantial part of his imprisonment i.e. almost 8 years, as he was arrested in connection of the crime in the month of January 2015.

4. Heard rival submissions. Also perused the record.

5. Admittedly, this is the third application filed by this applicant for suspension of his sentence of imprisonment and for release on bail. However, it appears that other two accused are already released on bail, one is by this court and one by the Hon'ble Apex Court. Though it appears that this applicant was having main role in the commission of crime, but it is extremely important to note that he was an under trial prison throughout the trial and he is behind the bars for almost 8 years. Thus, it appears that he has undergone substantial part of his sentence, which was only of 10 years. Though the Hon'ble Apex Court has observed that the applicant may file application for early hearing but considering the large number of old matters in this court, the hearing of the present appeal is not likely to be taken in near future. The applicant has already deposited the fine amount. Under such circumstances and specially considering that the applicant is behind bars for almost 8 years, following order is passed.

#### **ORDER**

- (i) The application is hereby allowed and substantive sentence of imprisonment for 10 years, i/d S.I. for two months for offence punishable under Section 304 (II) of the Indian

Penal Code imposed upon the applicant in Sessions Case No.41 of 2015 vide judgment and order dated 27/03/2019 is hereby suspended during the pendency of this appeal.

- (ii) The applicant be released on execution of his P.R. bond of Rs.25,000/- with one or more solvent sureties in the like amount.
- (ii) Bail in lower Court.
- (iii) Application is accordingly disposed of.

**( SANDIPKUMAR C. MORE, J. )**