

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

**CRIMINAL APPLICATION NO.2324 OF 2023
IN APEAL/573/2023 WITH APEAL/573/2023**

**RAMAJI VIKRAM PRASAD
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. S. G. Magare
APP for Respondent: Mr. Y. G. Gujarathi
....

CORAM : S. G. MEHARE, J.

DATE : 07.08.2023

PER COURT :

1. The learned A.P.P would submit that, since the compensation has been awarded, the person to whom the compensation is granted is necessary party. The Court is of the view that the compensation is granted to the applicant under Section 357 of the Code of Criminal Procedure. The Court determined the compensation considering the facts and circumstances. If the person getting compensation feels it lesser, the legal remedy is available. Hence, the Court is of the view that in an appeal against conviction such person is not necessary party. Hence, office objection is removed.

2. The applicant is seeking suspension of the sentence

imposed upon him to suffer rigors imprisonment for seven years for the offence punishable under Section 304 Part II of the Indian Penal Code by the learned Additional Sessions Judge, Ahmednagar in its judgment and order passed in Sessions Case No. 125 of 2020, dated 14.06.2022.

3. The learned counsel for the applicant would argue that, none of the offence was made out, however, the applicant has erroneously been held guilty for the offence punishable under Section 304 Part II of the Indian Penal Code. The cause of death of the deceased was suspicious. The short term sentence has been awarded. There were no antecedents to the discredit of the applicant. During the trial, he was on bail. He never misused the bail granted to him throughout the trial. He is a young boy of 23 years old. The trial may take its time. The evidence needs to be re-appreciated. Hence, the sentence may be suspended.

4. Per contra, the learned A.P.P. would submit that the prosecution has proved the case beyond reasonable doubt. The allegations were supported by medical evidence. The deceased was throttled. Hence, he does not deserve the suspension of sentence.

5. The facts on record reveal that the deceased was suffering from Tuberculosis. The doctor opined that the cause of death of the

deceased was shock due to blunt trauma over upper part of the right side of the chest. In the circumstances of the case, the applicant appears to have good grounds on merit. A short term sentence of seven years has been imposed upon him. The appeal may take its time and there is no possibility of conclusion of the appeal in the near future. After having gone through reasons recorded by the learned Additional Sessions Judge in the impugned judgment and order, the Court is of the view that there are legal grounds to be argued in the case. Hence the application for suspension of the sentence deserves to be allowed. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) The execution, implementation and effect of the order of the sentence, imposed upon the applicant to suffer R.I. for seven years by the learned Additional Sessions Judge, Ahmednagar by its judgment and order dated 14th June 2023 in Sessions Case No. 125 of 2020 stands suspended till conclusion of the appeal.
- (iii) The applicant shall be released on bail on executing P.B. and S.B. of Rs. 50,000/- (Rs. Fifty thousand) with one solvent surety of the like amount.
- (iv) Bail before the learned Additional Sessions Judge, Ahmednagar.

- (v) Issue notice to the respondent/State. The learned A.P.P. waives service of notice for the respondent State.
- (vi) Call record and proceedings.
- (vii) List the Criminal Appeal in due course.

(S. G. MEHARE)
JUDGE

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