

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL APPLICATION NO. 2392 OF 2023
IN APPEAL/730/2023 WITH APPEAL/730/2023

SHAIKH EJAZ SHAIKH IBRAHIM
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. A.S. Tilve – Advocate for Applicant
Mr. P.M. Kulkarni – APP for sole Respondent, State
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 28th August, 2023

PER COURT :

CRIMINAL APPLICATION NO. 2392 OF 2023

1. Heard rival submissions.
2. This application is filed for suspension of substantial sentence of imprisonment by the present applicant i.e. original accused no.2. Admittedly, the applicant – accused is convicted by the learned Additional Sessions Judge, Aurangabad, on 31.10.2022 in Sessions Case No.83 of 2013 for the offences punishable under Sections 307 and 323 read with Section 34 of Indian Penal Code and sentenced him to suffer R.I. for 10 years and to pay fine of Rs.10,000/-, in default of payment of

fine, he shall undergo imprisonment for one year under Section 307 of Indian Penal Code and to suffer R.I. for one year under Section 323 of Indian Penal Code. The applicant has not paid the fine amount.

3. Learned Counsel for the applicant submits that, the F.I.R. was not filed promptly by the complainant and the injured himself had admitted in his cross-examination that, his statement was recorded by the investigating machinery after his discharge from the hospital. He further pointed out that, the alleged eye-witness had in fact not supported the prosecution and, therefore, he was allowed to be cross-examined and in cross-examination also denied the involvement of the present applicant in open Court, though stated that he had identified two persons in T.I. parade. Moreover, the Medical Officer also did not state about the nature of injuries sustained by the injured while deposing before the Court. According to the learned Counsel for applicant, the applicant was on bail during the trial and he did not misuse the liberty.

4. On the contrary, learned A.P.P. strongly opposed the application on the ground that, the applicant is habitual criminal and so many cases similar to the present case has already registered against him. He pointed out that, the learned Trial Court by specially observing this fact has come to the conclusion that, during the pendency of cases of similar nature the applicant committed this offence while being on bail. As such, he prayed for rejection of this application.

5. Heard rival submissions. Admittedly, the eye-witness to the incidence has not supported the case of prosecution to the extent of involvement of present applicant. Moreover, the Medical Officer while deposing before the Court has also not stated about nature of injuries. Though the allegations against the present applicant are that, he had assaulted the injured with the help of knife but the Medical Officer i.e. P.W. – 7 in cross-examination has given confusing answers. In one hand he is saying that, the injuries sustained by the injured were not caused by sharp weapon which was allegedly used by the present applicant and on the other hand, he has again stated that those were possible due to sharp weapon. He has

specifically stated that, a person can also sustain such injuries due to fall on rough surface. Thus, it seems that there is doubt about the manner in which the injured had sustained the injuries. Most important fact is that the applicant – accused was on bail during the trial.

6. Considering these facts the substantive sentence of imprisonment imposed upon the present applicant – accused as aforesaid is hereby suspended during the pendency of this appeal subject to condition that, the applicant shall deposit the fine amount within a period of two weeks in the Trial Court. After deposit of such fine amount the applicant be released on bail on execution of P.B. and S.B. of Rs. 25,000/- (Rupees Twenty Five Thousands Only). Bail in Trial Court. The applicant shall not give threats to the injured or any of the prosecution witnesses.

7. Criminal Application is accordingly disposed of.

APPEAL NO. 730 OF 2023

8. Heard.

9. **Admit.**

10. Learned A.P.P. waive service for respondent, State.

11. The record and proceeding be sent back to the Trial Court forthwith for payment of fine amount and preparation of paperbook, and after that it be sent to this Court again.

[SANDIPKUMAR C. MORE]
JUDGE