

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL APPLICATION NO.2341 OF 2019
IN APPEAL/762/2019

BHUJANG NAGU WAGH

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. G.J. Kore, Advocate for applicant

Mr. R.D. Sanap, APP for respondent

...

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

DATE : 25th JANUARY, 2023

PER COURT :

1 Present application has been filed for suspension of sentence and releasing the applicant on bail. The applicant is the original accused No.1 in Sessions Case No.50/2016. The co-accused appears to be a juvenile. The learned Additional Sessions Judge, Osmanabad; though the charge appeared to be under Section 302 and 324 of the Indian Penal Code, had come to the conclusion that offence under Section 304-II of the Indian Penal Code has been proved. The applicant has been sentenced to undergo rigorous imprisonment for five years and pay fine of Rs.2,000/-, in default to suffer

rigorous imprisonment for six months. No separate sentence was awarded for the offence punishable under Section 324 of the Indian Penal Code. The appeal filed by the appellant before Single Bench has been admitted on 31.07.2019.

2 It will not be out of place to mention here that the State had filed application for leave to appeal by State bearing No.191 of 2019 and this Court by order dated 27.11.2019 has allowed the said application and granted leave. In view of this position the appeal filed by the applicant bearing Criminal Appeal No.762 of 2019; though ordinarily would have been before the Single Bench, is before this Court.

3 Heard learned Advocate Mr. G.J. Kore for the applicant and learned APP Mr. R.D. Sanap for the respondent.

4 At the outset, it is to be stated that as on today, the points which are in favour of the applicant are that he was on bail throughout the trial; secondly, the learned Trial Court has come to the conclusion that the prosecution had not made out the case under Section 302 of the Indian Penal Code, however, offence under Section 304-II of the Indian Penal Code has been made out. Under such circumstance, the sentence that has been imposed, that is, of five years can be termed as a small sentence as

contemplated in **Kiran Kumar vs. State of M.P., (2001) 9 SCC 211**, and, therefore, the sentence deserves to be suspended till the final hearing and disposal of Criminal Appeal No.762 of 2019 together with Criminal Appeal No.1220 of 2019. Another fact which we want to put it on record that when leave to appeal was granted by this Court, directions were issued for compliance of the provisions under Section 390 of the Code of Criminal Procedure, however, the learned Advocate for the applicant has stated that since the applicant is in jail he has not complied with those directions. Under such circumstance, we make it clear that the surety which we are directing to be produced by the applicant, when we are granting Criminal Application No.2341 of 2019 by suspending the sentence, is inclusive of the provisions under Section 390 of the Code of Criminal Procedure, it is not necessary that separate sureties be given in respect of the said appeal by the State.

5 For the aforesaid reasons, following order is passed.

ORDER

1 Application stands allowed and disposed of.

2 The substantive sentence awarded against the applicant/
appellant in Sessions Case No.50/2016 by learned Additional Sessions Judge,
Osmanabad on 30.04.2019 stands suspended till the final hearing and

disposal of Criminal Appeal No.762 of 2019 and Criminal Appeal No.1220 of 2019.

3 Applicant Bhujang Nagu Wagh be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) and two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

4 The applicant shall not commit any criminal activity.

5 The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeals, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

6 In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

7 Bail before the Trial Court.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)