

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

**949 CRIMINAL APPLICATION NO.3012 OF 2022
IN APEAL/660/2022**

Madhukar Pandharinath Kale

...Applicant

VERSUS

The State of Maharashtra

...Respondent

...
Advocate for Applicants : Mr. Joydeep Chatterji h/f Mr.Bhosle
Pratik A
APP for Respondent-State : Mr.A.S.Shinde
...

**CORAM : R. G. AVACHAT, J.
DATE : 04.05.2023.**

PER COURT :

1. Heard. This is an application for suspension of execution of substantive sentence of imprisonment.
2. The applicant has been convicted for the offence punishable under Section 304-II of the Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 1,00,000/-, with default stipulation.
3. The learned APP and the learned Advocate representing the informant would submit that, it is a case of murder and the appeal against the acquittal from the offence

punishable under Section 302 of the IPC has been preferred. Clause (iii) of Section 300 of the IPC was adverted to. According to them, the time has not ripened for grant of the application, rejection of the application was ultimately prayed for.

4. The evidence of PW-1 and PW-2 indicate that the incident was preceded by the scuffle between the applicant and the deceased. All of a sudden, the applicant took out a knife and gave a blow on the abdomen of the deceased. The appeal is of the year 2022. The applicant is behind the bars for little over 2 years and 3 months.

5. The learned Advocate for the applicant on his own submitted that the applicant would deposit the fine amount and he will have no objection if the fine amount is paid to the widow of the deceased, whatever may be the outcome of the appeal.

6. Section 304-II of the IPC prescribes the punishment of imprisonment which may extend to 10 years or with fine or with both. Admittedly, the incident was preceded by a scuffle. In view of this Court, the case may squarely fall within the explanation (iv) of Section 300 of the IPC.

7. Considering the fact that the applicant is in jail for

little over 2 years and 3 months and the appeal is not likely to be heard in near future, the Court is inclined to allow the application. Hence the following order :

ORDER

(a) The application is allowed.

(b) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by the learned Additional Sessions Judge, Ambad, District Jalna, in Sessions Case No. 226 of 2021 by the judgment and order dated 25.08.2022 to stand suspended and the applicant is released on bail on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety each in the like amount on following conditions :-

(ii) The applicant shall deposit fine amount as condition precedent, within a period of one month and thereafter only this order shall come into effect.

(iii) The fine amount shall be deposited with the trial Court. The same shall be paid to the widow of the deceased forthwith by account payee cheque.

(R. G. AVACHAT)
JUDGE

mahajansb/