

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2940 OF 2023

IN CRIMINAL APPEAL NO. 718 OF 2023

Pralhad Ramdas Misal

Age : 27 yrs, occ : agri.,

R/o Gut No.183, Chincholi

Shiwar (Dhangarwadi),

Tal.Bhokardan, Dist Jalna

Applicant

Versus

The State of Maharashtra

Through Hasnabad Police Station,

Aurangabad

Respondent

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Mr. R.N. Dhorde, Senior Counsel i/b Mr. Pratik Bhosle,
Advocate for the applicant.

Mr. P.M. Kulkarni, A.P.P. for the respondent – State.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 1st November 2023

Order :

1. Heard rival submissions.
2. The applicant, who is original accused No.3, is seeking suspension of his substantive sentence of imprisonment of 10 years for the offence punishable under Section 304-II of the Indian Penal Code passed by learned Addl. Sessions Judge, Jalna vide judgment and order dated 03.08.2023 in Sessions Case No. 11/2021.

3. The learned Senior Counsel Mr. Dhorde for the applicant submits that the applicant was charged for the offence under Section 302 I.P.C. initially, but during the course of trial, he was found guilty for the offence under Section 304-II of the I.P.C. He pointed out that the applicant/accused had inflicted only one blow on the neck of deceased and there were instances of sudden fight, and therefore, the act of the present applicant might be considered being done while exercising right of private defence. He pointed out that since the applicant was not on bail during the trial, he has already undergone imprisonment around three years out of the total imprisonment of 10 years.

4. On the contrary, 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. Further, the applicant had given blow of axe on vital part of body of the deceased i.e. the neck. As such, he prayed for rejection of the application.

5. Heard rival submissions. Also perused entire documents on record. It appears from the impugned judgment that there was sudden fight as a result of which the applicant had given single blow of axe. The applicant was

charged for the offence under Section 302 of I.P.C. but it was not established as there was sudden fight between the deceased and applicant, and therefore, the offence against the applicant was converted into offence under Section 304-II of the I.P.C. for which the imprisonment is 10 years. It is significant to note that the applicant has already undergone three years imprisonment. As such, considering the remaining period of sentence of imprisonment and that there is no possibility of taking the appeal immediately for final hearing, the substantive sentence of imprisonment imposed upon the applicant can be suspended. The applicant has already deposited the fine amount, and therefore, the following order is passed.

ORDER

- (i) The application is hereby allowed and substantive sentence of imprisonment of 10 years for the offence punishable under Sections 304-II of the Indian Penal Code imposed upon the applicant by the learned Additional Sessions Judge, Jalna vide judgment and order dated 03.08.2023 in Sessions Case No.11/2021, is hereby suspended during the pendency of this appeal.

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

(SANDIPKUMAR C. MORE, J.)