

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.3017 OF 2023  
IN  
CRIMINAL APPEAL NO.721 OF 2023

YOGESH HARI GOPAL  
VERSUS  
THE STATE OF MAHARASHTRA

...

Mr. S.S. Jadhav, Advocate for applicant

Mr. S.D. Ghayal, APP for respondent

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

DATE : 13<sup>th</sup> OCTOBER, 2023

**ORDER :**

1 Present application has been filed for suspension of sentence. The applicant is the original accused in Sessions Case No.129/2022 who has been convicted by learned Additional Sessions Judge, Aurangabad for the offence punishable under Sections 307, 309 and 506 of the Indian Penal Code, 1860. He has been sentenced to suffer rigorous imprisonment for life for having committed an offence punishable under Section 307 of the Indian Penal Code. He has also been sentenced to suffer simple imprisonment for

one year for committing an offence punishable under Section 309 of the Indian Penal Code. The applicant has further sentenced to suffer rigorous imprisonment for two years for committing an offence punishable under Section 506 of the Indian Penal Code. All the sentences were directed to run concurrently.

2            Heard learned Advocate Mr. S.S. Jadhav for the applicant/appellant and learned APP Mr. S.D. Ghayal for the respondent. Perused the paper book.

3            It has been vehemently submitted that the accused/appellant has been charged for trying to commit murder of his son Jivan and thereafter trying to commit suicide by the same knife (vastara) and then criminally intimidating his wife (informant) and injured son Jivan. Prosecution has examined PW 1 Savita, who is the wife of the appellant. She has stated that the appellant has assaulted his son by means of razor on his stomach, neck and then tried to assault himself on his own neck so as to commit suicide. PW 8 Jivan is the child injured, however, a careful perusal of the evidence led by the prosecution would show that the testimony of informant is not supported by the PW 2, the spot panch in respect of the spot. The testimony of PW 8 Jivan, the minor would show that he was tutored, so also, there is

delay in recording his statement. Date of discharge is not mentioned on the medical certificate. It cannot be said that the offence is proved beyond reasonable doubt. PW 7 Dharmik has been posed as an independent eye witness, however, he has not heard any noise. His alleged presence is doubtful. The appellant has every hope of his success in the appeal. The appeal is admitted recently. It would take long time to hear the appeal and till then it is not necessary to keep the appellant behind the bars.

4 Per contra, the learned APP supported the reasons given by the learned trial Judge and submitted that each and every aspect has been considered by the learned trial Judge. The injury to the injured was caused by razor, that too, on the neck. PW 8 appears to have given age ranging between 7-12 years, but he has given cogent answers. The testimony of PW 1 Savita and PW 8 Jivan stood supported by the medical evidence. The accused appears to have not properly explained the injuries on his person. Unless there would have been his intention to commit suicide there could not have been simultaneous injuries on Jivan as well as the accused. Therefore, no case is made out for suspension of sentence.

5 Perusal of the evidence would show that PW 1 Savita, who is the wife of present appellant, is the eye witness. She has stated about accused

assaulting Jivan on stomach and even on himself. PW 8 is the injured son, who has also stated that his father had assaulted him with razor. He has also been cross-examined on behalf of the accused. Their testimony is stated to have been supported by PW 7 Dharmik. PW 9 Dr. Jaywant Deore had examined Jivan and in all three incised wounds were noted on him. PW 10 Dr. Priya Singh had examined the accused and it is said that there were two injury marks on the neck. Both were contused lacerated wounds. The weapon has been seized from the spot. Therefore, there appears to be prima facie supporting evidence to the prosecution story and, therefore, this is not a fit case where the appellant should be released on bail by suspending the sentence. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

( SMT. VIBHA KANKANWADI, J. )

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