

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

17 CRIMINAL APPLICATION NO.3101 OF 2023
IN APEAL/755/2023

AKASH @ BALA CHANDRABHAN DANKE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. A. S. Tilve
APP for Respondent-State: Ms. D. S. Jape
Advocate for Respondent No.2 : Mr. R. B. Narvade Patil (Appointed)

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 23/10/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant, who is original accused No.4, is seeking suspension of his substantive sentences of imprisonment for the offences punishable under Section 326, 324, 323 and 201 of the Indian Penal Code in Sessions Case No.115 of 2021.
3. The learned counsel for the applicant / accused submits that though the present applicant was charged under Section 307 of IPC initially, but after completion of trial he was found guilty under Section 326 of IPC. He pointed out that the learned trial court has already acquitted the applicant / accused from the charge under Section 4/25 of the Arms Act by observing that he was not possessing any dangerous weapon, but simultaneously held him

guilty for causing grievous hurt by dangerous weapon. He further pointed out that the applicant was arrested on 20/04/2020 and since then he is jail. As such, according to him, the applicant has already undergone the imprisonment for the period of 3 years and 6 months, which is almost 2/3 rd of his total imprisonment.

4. On the contrary, the learned counsel for the respondent No.2-injured victim strongly opposed the application on the ground that the applicant at odd hours assaulted the injured / victim by means of dangerous weapon. He pointed out the learned trial court has acquitted the applicant from the charge under Section 4/25 of the Arms Act but it has come on record that the applicant had thrown away sword used in the commission of crime and for that purpose he is also convicted under Section 201 of IPC. The learned APP also supported the arguments advanced by the learned counsel for injured victim.

5. Admittedly, the conviction of the applicant has been recorded by the learned trial court after considering the entire evidence on record. However, it is significant to note that the applicant initially was charged for the offence under Section 307 of IPC but ultimately convicted only under Section 326 and others of IPC. Further, it appears that he has already undergone 2/3rd of his imprisonment imposed by the trial court, as he was an under trial prisoner.

Therefore, considering the quantum of imprisonment imposed upon the applicant and the period of it already undergone by him, I am of the opinion that he can be released on bail during the pendency of this appeal by suspending his substantive sentence of imprisonment. In view of the same, following order is passed

ORDER

- (i) The application is hereby allowed and substantive sentence of imprisonment of the applicant / accused in Sessions Case No.115 of 2021 under Sections 326, 324, 323 and 201 of IPC is hereby suspended during the pendency of this appeal.
- (ii) The applicant be released on bail on execution of his P.R. bond of Rs.25,000/- with one or more sureties in the like amount.
- (iii) Bail in lower Court.
- (iv) The fees of learned counsel appointed for respondent No.2 – injured / victim be paid to him as per rules.
- (v) Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)