

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

**CRIMINAL APPLICATION NO.3218 OF 2023
IN
CRIMINAL APPEAL NO.788 OF 2023**

Shivraj @ Balu S/o Subhashrao Hake,
Age-38 years, Occu:Agril.,
R/o-Bhategaon, Taluka-Kalamnuri,
District-Hingoli.

...APPELLANT

VERSUS

The State of Maharashtra,
Through Police Station Akhada Balapur,
Taluka-Kalamnuri, District-Hingoli.

...RESPONDENT

...
Mr. Dhananjay M. Shinde Advocate for Appellant.
Mr. S.D. Ghayal, A.P.P. for Respondent-State.
Mr. V.V. Ingale Advocate for Respondent No.2 in
Criminal Appeal No.788 of 2023.

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

DATE OF RESERVING ORDER : 1st NOVEMBER 2023

DATE OF PRONOUNCING ORDER : 7th NOVEMBER 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for suspension of the

substantive sentence imposed on the applicant / appellant. Applicant is the original accused in Sessions Case No. 90 of 2021. He came to be convicted for the offence punishable under Sections 307, 506 of the Indian Penal Code by the learned Additional Sessions Judge, Hingoli, District-Hingoli on 19th August 2023.

2. Heard learned Advocate Mr. Shinde appearing for the applicant, learned APP Mr. Ghayal appearing for the State and learned Advocate Mr. Ingale appearing for respondent No.2 in the Appeal.

3. Learned Advocate appearing for the applicant has taken us through the material which was before the learned trial Judge and submitted that the learned trial Judge has wrongly appreciated the evidence. It is said that the incident has taken place around 18.30 hours of 20th May 2021 but the First Information Report (for short "FIR") came to be lodged on 21st May 2021 and therefore, the FIR is belated. Statements of injured Kuberrao and injured PW-2 Mahesh Hake are also recorded belatedly. Only interested witnesses have been examined. Though it has come on record that the Police Patil had

given detailed information, yet his information has not been treated as FIR. The medical evidence in the form of PW-12 Dr. Umesh Deshpande who had treated PW-4 Kuberrao would show that injuries to the head and jaw would be possible due to fall. It cannot be said that there was any intention to kill when the injury is to the mandible. The Appeal is admitted and it would take long time to hear the Appeal. The appellant was on bail throughout the trial and therefore, the appellant deserves to be released on bail by suspending the sentence.

4. Per contra, the learned APP as well as learned Advocate appearing for injured Kuberrao strongly opposed the application and submitted that there is ample evidence against the present applicant – appellant. He was caught at the spot. He had not only caused injury to Kuberrao with scythe but also the injuries were caused to PW-2 Mahesh Hake who is neighbour; when he came to rescue injured. The medical evidence on record would show that if injured Kuberrao would not have been treated immediately, the injuries could have been fatal.

5. The first and foremost point which is in favour of the applicant – appellant is that he was on bail throughout the trial

and any misuse of the terms of the bail has not been reported. His Appeal is admitted and certainly it will take time to decide the Appeal.

6. The prosecution case is resting on the testimony of the informant PW-1 Gyanoba, who himself is also eye witness, he is the son of injured Kuberrao, PW-2 Mahesh Hake, who is another injured, he is from the brother-hood of the accused as well as informant and he is also the neighbour of the injured and informant, PW-3 Indubai, who is wife of injured Kuberrao, PW-4 Kuberrao, the injured himself. All of them have stated that the accused has caused injuries to the injured by means of scythe, which is certainly a deadly weapon. The further piece of evidence that is adduced and relied by the prosecution is the panchnama of the spot from where itself the scythe used for cutting sugar-cane was seized along with other articles. Prosecution is also relying on the evidence of PW-12 Dr. Umesh Deshpande, who has noted four injuries on the person of Kuberrao and those injuries were caused with sharp object and it is specifically stated that if those injuries would not have been treated immediately, it would have caused death of Kuberrao.

7. The points which have been raised are, as to why the information given by the Police Patil has not been treated as FIR and the delay in taking down the statements of the witnesses. We would like to say that at this stage we are required to go by the prima facie evidence as the trial Court has already done the scrutiny. The points which are raised, are required to be considered at the time of final hearing and those points cannot be the reason for suspending the sentence. The treatment that was required to be given at three different places to injured - PW-4 Kuberrao and then he has survived, is also required to be considered. The motive behind the commission of crime is said to be the dispute in respect of Bandh. Under the said circumstances, as there is ample evidence against the appellant, we do not find this to be a fit case where sentence should be suspended and the appellant should be released on bail. The Application, therefore, deserves to be rejected.

8. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE