

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3478 OF 2022
IN
CRIMINAL APPEAL NO. 813 OF 2022

RUTIK GOPAL PADAMWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Appellant : Mr. Kulkarni Govind A.
APP for Respondent/State : Mr. Y. G. Gujrati

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CORAM : KISHORE C. SANT, J.
DATE : 2nd JANUARY 2023.

Per Court :

Heard both sides.

1. This is an application by applicant/original accused no.2 praying for release on bail and for suspension of substantive sentence imposed vide order dated 01.07.2022 passed by the learned Additional Sessions Judge-1, Nanded in Sessions Case No.76/2020. The applicant is sentenced to suffer sentences for various offences in the table below.

Sr. No.	Conviction U/Sec. (I.P.C.)	Punishment Awarded	Fine	Default
01	307 r/w 34	R.I. for 7 years	Rs.10,000/-	R.I. for 6 months
02	353 r/w 34	R.I. for 5 years	Rs.7,000/-	R.I. for 4 months
03	332 r/w 34	R.I. for 5 years	Rs.7,000/-	R.I. for 4 months
04	333 r/w 34	R.I. for 7 years	Rs.10,000/-	R.I. for 6 months
05	336 r/w 34	R.I. for 3 months	Rs.250/-	R.I. for 15 days
06	324 r/w 34	R.I. for 3 years	Rs.5,000/-	R.I. for 3 months

2. It is submitted by the learned Advocate for the applicant that he has good case on merits, which is already admitted. He has taken this Court through the evidence of PW-10 i.e. doctor, who examined the injured witnesses. He submits that the injuries are shown to have been caused by assault with stick and pieces of broken floor tiles, which cannot be said to be weapon, by which the person can die. All injuries are attributable to accused no.1, who is not before this Court at present.

3. So far as allegations under the offences punishable under Sections 332, 333 and 353 of IPC are concerned, he submits that the applicant had no reason to know that the injured persons are the police officers as they were in civil dress. Even the police officers had no reason to apprehend the applicant as he is not a proclaimed offender. From the evidence of PW-10, he points out that none of injury is caused on the

vital parts of the bodies so as to attribute any intention on the part of the accused persons to cause death of the injured persons. He further submits that during the trial, the applicant was on bail and there is no allegation of misuse of liberty and he has already deposited fine amount in the Court below. He further submits that since 01.07.2022, he is in jail and thus he has completed six months in jail. Since the appeal is not likely to be heard in near future, he prays for release on bail and suspension of sentence.

4. The learned APP vehemently opposed the application. He submits that the applicant has assaulted the police officers on duty. Merely because the police officers were not in the uniform, is no reason to say that they were not on duty. He submits that the offences are serious in nature like Section 332, 333 and 336 of IPC. He submits that the Sessions Court had rightly held the applicant guilty of the said offences. If the applicant is released on bail, he would commit similar type of offence in future. He submits that it is categorically held in several cases by the Hon'ble Apex Court that nature of injury is immaterial in the offence under Section 307 and what needs to be seen is the

intention and the act of accused persons. He submits that the accused does not deserve sympathy.

5. Considering the above submissions, it is seen that the maximum punishment awarded is of seven years for the offence punishable under Section 307 and 333 of the IPC. It is seen from the nature of evidence at this stage at least a case is made out to show that there was no intention to cause death of the injured persons. When the police officers were not in uniform, there is no reason for the applicant to know that they are police officers. Looking to the conduct of the applicant that though he was on bail during the trial, there is no allegations of misuse of liberty. It further needs to be considered that this appeal is not likely to be heard in near future. One more thing is that the age of applicant is hardly 20 years as of now. If he remains in jail, he would be in the company of hard core criminals. This aspect also needs to be considered. It has further come on record that the injuries are attributable to the accused no.1. No major role is attributed to the present applicant. Considering all these, this Court finds that it would be desirable to allow the application. Hence the following order.

ORDER

- (i) The applicant shall be released on bail on executing P. R. bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand only) with solvent surety in the like amount in connection with judgment and order dated 01.07.2022 passed by the learned Additional Sessions Judge-1, Nanded in Sessions Case No. 76/2020 till hearing of the appeal.
- (ii) The substantive sentence awarded by the learned Additional Sessions Judge-1, Nanded in Sessions Case No. 76/2020 by judgment and order dated 01.07.2022 stands suspended till appeal is finally decided.
- (iii) The applicant shall furnish his residential address and mobile number to the concerned police station. If there is any change in his address or mobile number, he shall immediately inform to the concerned police.
- (iv) With this, the Criminal Application is disposed off.

[KISHORE C. SANT, J.]

Najeed.