

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1622 OF 2023
IN
CRIMINAL APPEAL NO.491 OF 2023

Gulam Dastgir Mohammad Sabir .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Chetan S. Damre for the Applicant.

Mr.S.R.Agarkar, A.P.P. for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 27th APRIL, 2023

P.C:-

1. By the present Application, the Appellant/Applicant seeks suspension of sentence imposed on him by the Addl. Sessions Judge, Malegaon in Sessions Case No.2 of 2019 and pray for his release on bail, during the pendency of Appeal.

The Applicant faced charge under Sections 307 and 326 of IPC. However, he came to be convicted for committing an offence under Section 326 and sentenced to undergo R.I. for seven years and to pay fine of Rs.20,000/-, in default of payment of fine, to undergo R.I. for a term of two years.

2. On hearing the learned counsel for the Applicant and on perusal of the impugned judgment as well as the notes of evidence, it is evidently clear that the case of the prosecution rested upon the testimony of PW 4 exclusively, as he is the injured person. The other eye witnesses i.e. PW 1, PW 2 and PW 3 turned hostile and were subjected to cross-examination by the prosecution, but the learned Judge has admitted that no evidence in favour of the prosecution could be elicited from them.

PW 4 is the injured and when his testimony is carefully gone into, he has given certain admissions, which create a noticeable dent in the prosecution case.

In the cross examination, he admits that when the incident took place, it was dark and since there was a crowd, he could not say definitely as to who has done what. He also admitted that since he knew the Accused, who reside in his lane and was acquainted to him, he has inadvertently stated that he assaulted him. Subsequently, he denied the suggestion that he was not assaulted by the Accused on hands, head and stomach.

As such, his evidence is required to be appreciated in the light of the surrounding circumstances.

3. PW 7, the Medical Officer, deposed that while he was on duty on 06/07/2018, the injured was brought to him and on examining him, he issued the Injury Certificate. Pertinent to note that the incident took place on 07/07/2018.

Apart from this, the said witness has given an admission

to the effect that except injury No.1, all other injuries are simple.

4. The learned Judge has failed to consider lacunae in the case of the prosecution and has returned a finding, by recording that though an admission comes from the injured witness that he was not able to say with certainty as to what act was committed by whom, the learned Judge has recorded that said admission cannot be stretched to such an extent that no assault was made by the Accused.

There appears to be an erroneous assumption of certain facts, which is not permissible in criminal trial and prima facie, the learned Judge has fallen into a grave error in appreciating the evidence.

In any case, since it would be a matter of Appeal, I deem it appropriate to grant the application. Hence, the following order.

: ORDER :

1. Interim Application is allowed.
2. The sentence imposed on the Applicant vide judgment dated 04/03/2023, passed in Sessions Case No.2 of 2019 is suspended.
3. During the pendency of the Appeal, the Applicant be released on bail on furnishing P.R.Bond to the extent of Rs.25,000/- with one or more sureties in the like amount.

(SMT. BHARATI DANGRE, J.)