



Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 2688 OF 2023
IN
CRIMINAL APPEAL NO.918 OF 2023**

Suresh Somla Chavan

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr. Irfan A. Shaikh for the applicant

Ms. S.S. Kaushik, APP for the respondent – State

Mr. Linkan Hasure, PSI, Koparkhairne Police Station, Navi Mumbai
present in Court

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 25th AUGUST, 2023

P.C.

1. Heard Mr. Shaikh, learned Counsel for the applicant.
2. This is an application seeking suspension of execution of the sentence, pending the appeal wherein the applicant has been convicted and sentenced by the Sessions Judge, Thane of the offence punishable under Section 304 Part-II of the Indian Penal Code and directed to undergo Rigorous Imprisonment for 5 years

with fine of Rs.2,000/- in default to undergo R.I. for 3 months.

3. A charge was framed under Section 302 of the IPC. The learned Counsel for the applicant has invited my attention to the evidence of PW-2 – Nanda Rathod, who was staying with the deceased. Admittedly, the applicant is the son of maternal sister of Kamla Chavan.

4. On the date of incident, the applicant had compelled the deceased to consume liquor even though the deceased had already consumed liquor on that day and was reluctant to consume more liquor. On the following day, when the applicant had been to the house of the deceased, there was a quarrel between the deceased and the applicant. The applicant thereafter, assaulted the deceased by inflicting kick blows on his chest. Ultimately, the deceased who was taken to the Hospital of Municipal Corporation, was declared dead by the Doctor.

5. This Court by an order dated 25th June, 2019 while releasing the applicant on bail, observed that admittedly no weapon was used by the applicant at the time of alleged incident but he only kicked twice on the chest of the deceased. Even from the evidence of the

prosecution, *prima facie*, it cannot be inferred that there was some pre-meditation to commit the alleged offence.

6. The learned APP is fair enough to submit that there are no antecedents. The question as to whether the alleged act of the applicant would amount to a culpable homicide, not a murder, would be decided finally on merit at the time of hearing of the appeal. He has been convicted by the Sessions Court in the month of April, 2023. Even though the sentence of 5 years has been awarded, the chances of hearing the appeal in near future are uncertain.

7. Looking to the age of the applicant, nature of evidence adduced by the prosecution and also in light of the fact that he was on bail during trial, execution of the sentence of 5 years can be suspended in view of the aforesaid facts. It is also noted that the applicant did not misuse the liberty while on bail during trial. Hence, the following order :-

ORDER

- (i) Pending the hearing and disposal of the appeal, the

execution of the substantive sentence is suspended upon the applicant furnishing a P.R. bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

(ii) The applicant shall furnish his mobile number and residential address to the concerned police station.

(iii) The applicant shall attend the concerned police station on the first day of every month after every three months.

(iv) The applicant shall deposit his passport, if any, with the concerned police station.

(v) If the applicant commits a single default, the prosecution is at liberty to seek cancellation of the appeal.

8. The application is disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)