

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
CRIMINAL APPLICATION (APPA) NO. 138/2023
IN
CRIMINAL APPEAL NO. 73/2023

Datta Tukaram Ingle

.. Applicant

versus

The State of Maharashtra

Th: Its PSO Ural, Tq. Balapur, Dist.Akola.

.. Respondent

.....
Mr.N.A. Sharma, Advocate for the applicant

Mr.V.A. Thakare, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 2nd March, 2023.

PC:

Heard.

2. The applicant has filed the present Application under section 389 of the Code of Criminal Procedure for suspension of sentence and releasing him on bail. The applicant has been convicted for offences punishable under section 307 of the Indian Penal Code and sentenced to suffer R I for seven years and also to pay a fine of Rs. 1,000/- by the learned Additional Sessions Judge, Akola vide judgment and order dated 30.1.2020 in Sessions Trial No. 42/2016.

3. The learned counsel for the applicant submits that the fine amount has already been deposited. He submits that the period undergone by the applicant in jail is about nine months. At present, he is in jail. He has invited my attention to the evidence led before the trial Court. He submits that the defence of the applicant is of old rivalry and

false implication. He submits that the applicant has allegedly lodged assault on PW 3 by means of weapon like a sword.

4. I have gone through the evidence. PW1 though has deposed about the assault and though stated that he can identify the weapon, the weapon was not shown to him and, therefore, PW 1 has not identified the weapon. PW 2 is spot Panch. PW 3 is injured. PW 3 also deposed that he was assaulted by the applicant by means of weapon like sword. The applicant gave blow to the witness on left shoulder, right portion of neck etc. The injured was taken to hospital by three persons namely, Atul Bhakare, Kuldip Bhakare and Ritesh Bhakare, none of them have been examined as a prosecution witness. Further, when the weapon was shown to PW3 he stated that the weapon is not the same.

5. Thus, the weapon used in the crime is not proved by the prosecution. In fact, the applicant has been acquitted of the offence punishable u/s 4/25 of the Arms Act. Thus, the conviction under Section 307 of the IPC is based only on testimony of witnesses and the medical evidence. The question however is whether injuries were indeed inflicted by use of deadly weapon. This would require a re-look at the entire evidence.

6. In the circumstances though the learned APP has opposed the application, to my mind, the applicant has made out a case for the relief.

7. When enquired, the learned counsel for the applicant submits that except this crime, there are no criminal antecedents against

the applicant. The family members of applicant have immovable property and as such, he possesses strong roots in the society

8. In view of the above, this is a fit case where the execution of sentence should be suspended. Hence the following order :-

ORDER

The execution of the sentence imposed upon the applicant-Datta Tukaram Ingle, by judgment and order dated 30.01.2020 passed by learned Additional Sessions Judge, Akola in Sessions Trial No. 42/2016 for the offences punishable under sections 307 of IPC is hereby suspended and he is directed to be released on bail, on the following conditions:

- (i) The applicants shall furnish PR bond in the sum of Rs. 50,000/-, with one or two solvent sureties in the like amount before the lower Court.
- (ii) The applicant shall remain present before this Court at the time of final hearing of the Appeal.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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