

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APPA) NO. 690 OF 2023

IN

CRIMINAL APPEAL NO. 326 OF 2023

Pramod s/o Sheshrao Chavan

Vs.

State of Maharashtra, Thru. PSO, PS Murtizapur, District – Akola

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.M. Daga, Advocate for applicant.
Mr. N.R. Rode, APP for respondent/State.

**CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.**

DATE : 28.07.2023.

Heard.

2. This is an application seeking suspension of execution of sentence of accused No.5, namely Pramod Chavan, who has been convicted by trial Court in Sessions Trial No.191/2014, vide judgment and order dated 27.03.2023. Beside other offences, the accused has been convicted for the offence punishable under Section 302 of the Indian Penal Code and directed to undergo imprisonment for life. The applicant applied for suspension and bail on account of inadequacy of material, trial Court's

failure to appreciate the evidence in proper perspective. Besides that, it is submitted that during trial the applicant Pramod was on bail and in case of reversal of decision of trial Court, the position would become irreversible. On the other hand, learned APP objected to this application by contending that though the applicant has used stick in the occurrence, however, there was a common object of the assembly and therefore, he is also equally responsible for the death of one Manoj Sharma.

3. With the assistance of both sides, we have examined the entire material along with the judgment of conviction rendered by trial Court. In the incident dated 04.06.2014, some persons assailed deceased Manoj by deadly weapons which proved to be fatal. On the same day, brother of deceased Manoj has lodged report with the concerned police stating the names of four assailants along with two/three unknown assailants. Further, he stated that he has seen unknown assailants and he can identified them by faces. On the basis of said information, investigation has been carried out. Admittedly, the name of applicant Pramod was not stated by the informant, at first opportunity and further, no T.I. Parade has been conducted. True, it

is not requirement of law that the informant should know all the assailants but, in that light, the evidences to be appreciated. PW-1 informant though stated in the evidence, specific name of the applicant, it is argued that without foundation of disclosure in F.I.R. and in absence of T.I. Parade, the same cannot be relied.

4. The prosecution has examined PW-2 Ram Joshi, who is another eye witness. He has stated the participation of Pramod. In this regard, the applicant's learned counsel has pointed out that the statement of Ram Joshi was recorded on 11.06.2014 i.e. after seven days from the occurrence. We have been taken through the cross-examination of this witness where it is stated that though he was admitted in the hospital, during mean period several persons including Police Officers met him but, he did not disclose the name of Pramod. The said aspect also requires a serious consideration. Besides that, the applicant's learned counsel would point out that though the clothes of applicant and a stick at his instance has been recovered, however, CA report discloses that no blood stains were found on these articles. It is pointed out that the allegations against applicant are to the extent of assaulting by stick

whilst the others have assaulted by sharp aged weapons. Having regard to all above material, the matter requires a re-look on the point which has been agitated in defence of applicant. In the circumstances, we are inclined to exercise our discretion, hence, the following order :-

ORDER

The application is allowed.

2. Execution of substantive sentence passed in Sessions Case No.191/2014 of applicant Pramod s/o Sheshrao Chavan, is hereby suspended till the disposal of appeal.

3. In the meantime, the applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

4. The applicant shall remain present in this Court as and when specifically directed.

5. The application stands disposed in above terms.

JUDGE

JUDGE