



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

...
CRIMINAL APPLICATION (APPA) No. 882/2023
IN
CRIMINAL APPEAL No. 539/2023

Madhao s/o Patruji Sonwane

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Bhiwapur, Dist.Nagpur.

.. Respondent

.....
Mr.R.S. Akbani, Advocate for the applicant

Mr. Amit Chutke, APP for Respondent-State
.....

CORAM: ANIL L. PANSARE, J.

DATED : 14th September, 2023.

PC:

Heard Mr. R.S.Akbani, the learned counsel for the applicant
and Mr.Amit Chutke, the learned APP for the respondent-State.

2. The applicant has filed this application under section 389 of the Code of Criminal Procedure. The applicant has been convicted by the judgment dated 10.05.2023 passed by the learned Additional Sessions Judge, Nagpur in Sessions Trial Case No. 222/2019 for the offences punishable under Section 304, Part-II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default, suffer rigorous imprisonment for two years. It is submitted that the applicant has already paid the fine amount.

3. Having heard both the sides and after perusal of the record, it appears that the applicant and the deceased had indulged in a scuffle

on the count of having “*Kharra*”. The deceased was under the influence of alcohol. During the scuffle, the applicant is said to have picked up a stick and given a blow on the head of the deceased. It is nobody’s case that the injury was such that blood started oozing from the head of the deceased.

4. The incident has occurred on 04.01.2019; whereas the FIR has been lodged on 07.01.2019 by the friend of the deceased. The deceased has expired on 09.01.2019. The FIR (Exh.29) indicates that the friend has narrated to the police that the deceased had fallen from the roof of the house and suffered injuries. The friend has stated that this information was given to him by the mother of the deceased. As such, the mother has denied the said suggestion. However, in the evidence, PW5 Doctor, has deposed in chief-examination that the internal injuries mentioned in the report were less likely to be possible by the stick referred to him. In the cross-examination, the Doctor has deposed that injuries sustained by the deceased could be possible by hard and blunt object. He admits that the injuries sustained were possible because of falling down after consuming liquor. PW1 informant has admitted in cross-examination that the mother of the deceased had informed him that the deceased had fallen from the roof.

5. The Learned APP has vehemently opposed the application on the ground that the mother of the deceased has not supported the theory of falling down from the roof.

6. The learned counsel for the applicant submits that the applicant was on bail pending trial. The Appeal is filed within time. He

further submits that there are no allegations that the applicant has misused the liberty while on bail. There are no criminal antecedents. The applicant possesses good case on merits.

7. Considering the discrepancies and further considering the fact that the applicant has no criminal antecedents and was on bail pending trial, I am satisfied that the applicant has made out a case for suspension of sentence. Hence the following order:-

ORDER:

- (i) The Application is allowed.
- (ii) The execution of the sentence imposed upon the applicant by judgment and order dated 10.05.2023 passed by the learned Additional Sessions Judge, Nagpur in Sessions Trial Case No. 222/2019 for the offence punishable under Section 304, Part-II of the Indian Penal Code is hereby suspended, on the following conditions :
 - (a) The applicant shall furnish PR bond in the sum of Rs. 50,000/-, (Rupees fifty thousand) with one or two solvent surety in the like amount before the lower Court.
 - (b) The applicant shall remain present before this Court at the time of final hearing of the Appeal.

[ANIL L. PANSARE, J.]