

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

CRIMINAL APPLICATION (APPA) NO. 774 OF 2023

IN

CRIMINAL APPEAL NO.479 OF 2023

Ramesh s/o Daulat Dangore and another

Vs.

State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.C. Jaltare, Advocate for appellants.

Shri S.M. Ghodeswar, APP for respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : AUGUST 09, 2023.

The appellants have filed the application under Section 389 of the Code of Criminal Procedure for suspension of sentence and for releasing the appellant on bail.

2. The present appellants were prosecuted for the offence punishable under Sections 307, 323 read with Section 34 of the Indian Penal Code. After appreciating the evidence, the learned trial Court held the appellant guilty of the offence punishable under Section 307 and sentenced to suffer rigorous imprisonment present appellants for four years and to pay fine of Rs.5000/- and in default, he shall further suffer simple imprisonment for two months. The co-accused are convicted of the offence punishable under Section 323 of the IPC and sentenced to suffer imprisonment till rising of the Court.

3. The present appellants have challenged the impugned judgment and the order of the sentence on various grounds. One of the ground is that there is contradiction in oral and medical evidence. The learned trial Court has not considered the said aspect. The learned trial Court has also not considered the aspect of delay in lodging FIR. Thus, the present appellants have every chance of success in the appeal, however, the appeal will take its own time for final decision, in the meantime, if the sentence is executed then the purpose of filing the appeal would frustrate and prays for suspension of sentence.

4. The said application is strongly opposed by learned APP on the ground that the learned trial Court has rightly appreciated the evidence and convicted the appeal and no grounds are made out for suspension of sentence.

5. Heard learned counsel for the appellants and learned APP. Perused impugned judgment and deposition. From the deposition of the informant he was assaulted by the weapon like stick and sickle. The medical evidence shows that the injured has sustained three injuries in the nature of incised wound. Thus, the medical evidence shows that the injuries are sustained by the sharp weapon, however, as per the prosecution witnesses, two weapons are used. Admittedly, at this stage, the evidence is not to be re-appreciated but only consideration is whether the present appellants have made out a case to show that he has fair chance of success in the

appeal. The learned counsel for the appellants has pointed out from the evidence that though there are vital omissions and contradictions, which are affecting the core of the prosecution, the learned trial Court has not considered the same and convicted the present appellants. The impugned judgment shows that the learned trial Court has placed reliance on the evidence of the injured witness as well as the medical evidence and convicted the present appellants. Considering the grounds made by the present appellants, the present appellants have fair chance of success in the present appeal. However, the appeal will take its own time for its final decision, in the meantime, if the sentence is executed the purpose of preferring the appeal would frustrate. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- i. The criminal application is allowed.
- ii. The execution of sentence awarded by the Additional Sessions Judge-14, Nagpur in Sessions Case No.53/2018 dated 26.06.2023 is hereby suspended pending appeal.
- iii. The appellants be released on bail furnishing PR bond in the sum of ₹25,000/- with one surety of like amount.
- iv. The appellants shall furnish their cellphone number and his address with address proof.

The application is disposed of.

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6. Appeal be placed before the Court for final hearing after preparation of paper book.

JUDGE

Wagh

Signature Not Verified

Digitally Signed By: SURESH RAOSAHEB
WAGH
Personal Assistant to Hon'ble
Judge, High Court of Bombay, Nagpur
Bench, Nagpur.
Signing Date: 11.08.2023