

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

CRIMINAL APPLICATION (APPA) NO. 1022/2022
IN
CRIMINAL APPEAL NO. 798/2022

Ankush s/o Devnath Bhagat V/s State of Maharashtra.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Ashwin Wasnik, counsel for applicant/appellant.
Mr. M.J.Khan, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/08/2023.

1. The present application is for suspension of sentence and releasing the applicant/appellant on bail.

2. The applicant/appellant was prosecuted for the offence punishable under Sections 307 and 506 of the Indian Penal Code. After appreciating the evidence, the learned trial Court held the applicant/appellant guilty and sentenced him to suffer R.I. of seven years and fine of Rs. 3,000/-, and in default further R.I. of nine months of the offence punishable under Section 307 of the Indian Penal Code and the offence under Section 506 of the Indian Penal Code, the appellant has further R.I. for three years and fine of Rs. 2,000/- in default, further six months of R.I.

3. Being aggrieved and dissatisfied with the said judgment and order of sentence, the present appeal is preferred by the applicant/appellant, on the ground that learned trial has not appreciated the evidence that immediately, the Medical Officer of the Government Hospital has discharged the injured. After gap of 3 to 4 hours, he again admitted in the Private Hospital and obtained the certificate. The cross-examination of the injured itself sufficiently show that he was immediately discharged from the hospital, after primary treatment. At the most, the case covers under Section 324 of the Indian Penal Code, the learned trial Court has not appreciated the evidence in proper perspective and convicted the applicant/appellant erroneously. The applicant/appellant has every chance of success in the present appeal, however, it will take its own time for its final disposal. In the meantime, if the entire sentenced is executed then purpose of preferring the appeal would be frustrated.

4. The said application is strongly opposed by the State on the ground that learned trial Court has rightly considered the medical evidence and rightly convicted the present appellant. The appellant has not made out any ground for suspension of sentence.

5. Having heard learned counsel Mr Ashwin Wasnik for the applicant/appellant and learned APP for the State. Perused the impugned judgment and evidence on record. The learned counsel for the applicant/appellant has rightly pointed out that the injured admitted during his cross-examination and discharged from the hospital immediately. The learned trial Court has not considered this aspect, as per the submission of the learned counsel. Thus, the appellant has made out the arguable points in the present appeal. The appeal will take its own time for its final disposal. In the meantime, if entire sentence is executed, no purpose will be served by preferring this appeal. In view of that, application deserves to be allowed. Learned counsel for the applicant/appellant submitted that he will pay the fine amount in the learned trial Court. The applicant/appellant was not on bail during the trial also.

6. Considering the fact that the applicant/appellant has made out the case to show that he has every chance of success in the present appeal, the execution of the sentence deserves to be suspended. Accordingly, I proceed to pass following order.

- a. The criminal application is **allowed**.

- b. The execution of the sentence is suspended till decision of the appeal.
- c. The applicant/appellant is released on bail on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.
- d. The applicant/appellant shall attend the learned trial Court once in a month on first of every month and trial Court shall record his presence.
- e. The applicant/appellant shall deposit the fine amount before the learned trial Court within one week.
- f. The applicant/appellant shall furnish his cell phone number and address along with his address proof.

Criminal application is **disposed of**.

JUDGE