



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

Criminal Application (APPR) No. 324 of 2023

in

Criminal Revision Application No. 217 of 2023

[Nago @ Nagesh Bhauraoji Pohane ..vs.. State of Maharashtra through PS.O., Seloo, Wardha]

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

Court's or Judge's orders

Mr. M. V. Rai, Advocate for the applicant
Ms. Shamsi Haider, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 9-10-2023

Present application is for suspension of sentence.

2. The applicant has been convicted by learned Judicial Magistrate First Class, 2nd Court, Seloo, District Wardha in R.C.C. No. 110/2016 by judgment and order passed on 8-9-2021 for the offence punishable under Section 326 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs. 5000/- and in default of payment of fine to suffer rigorous imprisonment for two months. This judgment of conviction came to be confirmed by the Additional Sessions Judge, Wardha in Criminal Appeal No. 17/2021 on 21-9-2023.

3. On previous date, following order was passed.

“Heard.

Admit.

Call record and proceedings.

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Heard.

Evidence of victim indicates that there are discrepancies on the point as to who has lodged the First Information Report, whether the victim or his son. There are omissions on the point of assault by the applicant. The victim has deposed that the stick seized by the investigating agency and shown to him in Court is not the same by which the applicant has allegedly assaulted him (the victim).

Issue notice to the non applicant, returnable on 09.10.2023.

Learned A.P.P. waives service of notice for non-applicant-State.”

4. Learned Additional Public Prosecutor has invited my attention to paragraph no. 23 of the judgment wherein the learned appellate Court has, while admitting that the injured has not identified the weapon, held the applicant guilty under Section 326 of the Indian Penal Code (IPC) on the ground that the injured is not expected to identify the weapon when there is a sudden attack. The appellate Court has relied upon the version of injured that accused has given blows of stick. In a given case, the injured may not be able to identify the weapon and say so in evidence. However, in the present case, the injured has categorically deposed that the weapon shown to him is not the same by which the applicant has beaten him. It is not the evidence of injured that he is unable to identify the weapon either because of lapse of time or because of sudden attack on him. He has categorically denied that the stick shown to him was used in the crime.

5. Section 326 of IPC reads thus :

326. Voluntarily causing grievous hurt by dangerous weapons or means. - *Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

6. Thus the weapon used ought to be such which is likely to cause death. In other words, the weapon must be deadly weapon.

7. P.W. 4 – panch witness and P.W. 6 – Investigating Officer have identified the weapon. They have deposed that the weapon has been discovered at the instance of accused on 9-9-2016. The offence has been allegedly committed on 2-9-2016. It is well settled that such discovery unless connected with the crime is of no relevance. The only witness who has deposed about the stick is injured P.W. 1, who stated that the stick seized by the police was not used by the applicant while assaulting him.

8. In the circumstances, a detail scrutiny of evidence is required. In that sense, the applicant has made out a case for suspension of sentence. Hence, following order.

ORDER

- (i) The application is allowed.
- (ii) The execution of sentence imposed upon the applicant by Judicial Magistrate First Class, 2nd Court, Seloo, District Wardha in R.C.C. No. 110/2016 passed on 8-9-2021 and which is confirmed by the Additional Sessions Judge, Wardha in Criminal Appeal No. 17/2021 on 21-9-2023, for the offence punishable under Section 326 of the Indian Penal Code, is hereby suspended.
- (iii) Applicant - Nago @ Nagesh Bhauraoji Pohane, shall be released on bail on his furnishing PR. bond in the sum of Rs. 25,000/- with one surety in the like amount before the trial Court.
- (iv) The applicant shall remain present before this Court at the time of final hearing of the revision.

(Anil L. Pansare, J.)