



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 87 OF 2024
IN
CRIMINAL APPEAL NO. 27 OF 2024

Kailas Gorakhnath Mhaske,
Age : 42 Yrs., Occu.: Labour
R/o. In front of New Bekri, Rahulnagar,
Railway Station, Aurangabad.

... Applicant.

Versus

The State of Maharashtra,
Through Police Inspector,
Police Station Chawani,
Aurangabad, Dist. Aurangabad.

... Respondent.

...
Ms. Ranjana D. Reddy, Advocate for Applicant
(Appointed through legal aid)
Mr. N. D. Batule, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 9th JANUARY, 2024

PRONOUNCED ON : 12th JANUARY, 2024

ORDER :

1. By way of instant application, convict is praying for suspension of sentence and grant of bail during pendency of Criminal Appeal No. 27 of 2024.

2. It is submitted that, applicant was charged for commission of offence under section 307, 326, 504 and 506 of Indian Penal Code (IPC). However, on appreciation of evidence,

learned trial Judge has held applicant guilty for only offence under section 324 of IPC and he is sentenced to suffer rigorous imprisonment for 3 years and to pay fine. That, fine amount is already paid. According to learned counsel, there are variances and inconsistencies in prosecution witnesses. False and concocted story has been set up. Prosecution's own witness doubted the recovered Article knife to be the weapon used in the occurrence. Therefore, findings of trial court being erroneous, appeal has been preferred. However, as much more time would be required and applicant being behind the bars since long time and also taking into consideration the quantum of sentence, it is prayed that, relief be granted.

3. While opposing the above application, learned APP would submit that, evidence of victim injured has remained unshaken. There is medical evidence suggesting injury to be caused. There is no merit to grant relief as prayed.

4. After hearing both sides and on going through the record and papers, it seems that, applicant was charge-sheeted for commission of offence under sections 307, 326, 504 and 506 of IPC. In support of its case prosecution seems to have examined as many as 08 witnesses. PW2 Rekha, victim seems to be the wife of

applicant and there seems to be marital discord and were resultantly residing separately. There are allegations that, on 15.08.2018, accused visited his wife PW2 Rekha while she was alone in the house and stabbed her by means of knife. Medical certificate (Exh.40) shows that, injuries are simple in nature.

5. On appreciation and analysis, learned trial Judge has held applicant guilty only for offence under section 324 of IPC and he has been sentenced to suffer three years imprisonment. Considering the term of sentence, nature of accusations, medical certificate and the aspect that appeal would take long time to be heard and decided, relief as prayed deserves to be granted. Hence, I proceed to pass following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant Kailas Gorakhnath Mhaske in Sessions Case No.185 of 2019 by the learned Additional Sessions Judge, Aurangabad on 04.12.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.27 of 2024.
- (iii) The applicant be released on P.R. Bond of Rs.30,000/- (Rs.Thirty thousand only) with two solvent sureties in the like amount.

- (iv) The applicant shall not commit any criminal activity.
- (v) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
- (vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)