



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 95 OF 2024
IN
CRIMINAL APPEAL NO. 30 OF 2024

Amol s/o Sudhakar Waghmare,
Age : 36 years, Occu.: Agri.,
R/o. : Laxminagar Chivari,
Tq: Tuljapur, Dist: Osmanabad

... Applicant

Versus

The State of Maharashtra

... Respondent

...
Mr. G. V. Wani h/f. Mr. Uttam B. Bondar, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent - State

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 FEBRUARY 2024

PRONOUNCED ON : 12 FEBRUARY 2024

ORDER :

1. Applicant convict hereby seeks suspension of sentence on account of conviction recorded by Additional Sessions Judge, Osmanabad dated 12.12.2023 in Sessions Case No. 39 of 2021 as well as also seeks grant of bail.

2. It is submitted that, applicant stood convicted for offence under section 304 Part-I of Indian Penal Code. That, incident had taken place with the husband of informant. Informant was not present when the actual incident of dash to her husband by

the motorcyclist. He was also not party to the altercation or scuffle. There are allegations against applicant for using stick and apparently there is a single blow. There was no premeditation and rather occurrence was pure accidental, followed by alleged assault. He pointed out that, there is improper appreciation and so appeal has been preferred, but it would take sufficiently long to be heard and decided. Hence, he prays for above relief of suspension of sentence as well as grant of bail during pendency of appeal.

3. While opposing the application, learned APP pointed out that, case has been established by adducing 9 witnesses including eye witnesses PW5 Waman and PW6 Dilip. Though role attributed is of assault by stick, it is on head. Medical expert has been examined. Death is attributed to said blow and other injuries. Therefore, offence being serious, he prays to reject prayers of suspension of sentence and grant of bail.

4. After considering the above submissions and on going through the papers, it transpires that, as a result of occurrence dated 22.11.2020, during which some cut of was given by accused no.2 to husband of informant. On being questioned to that extent, initially there were abuses by accused no.2 to deceased. It is alleged that, present applicant came with stick and gave blow on

the head of deceased Yashwant, as a result of which, he fell and was admitted in unconscious condition and FIR was lodged on 23.11.2020. However, Yashwant succumbed while undergoing treatment on 25.11.2020 and crime was converted into section 302 of IPC.

5. Record shows that, even after lodgment of complaint by informant wife of deceased, there is FIR at the instance of original accused no.2 Sudhakar also alleging commission of offence under sections 147, 148, 324, 323, 504 read with section 149 of IPC including alleged eye witness herein PW5 Waman and PW6 Dilip.

Therefore, apparently there are cross complaints.

6. Prima facie, it emerges that, occurrence is a result of giving cut of motorcycle, in which there was quarrel followed by scuffle. As regards present applicant is concerned, his role is regarding giving a blow on the head of deceased, which later on turned down to be fatal. Admittedly, applicant is held guilty for offence under section 304 Part-I of IPC and hence sentenced to suffer rigorous imprisonment for 10 years. Said judgment of conviction and sentence seems to be questioned by filing appeal on 06.01.2024.

6. It appears that, accused is an under trial prisoner. Much more time would be required for hearing and deciding the appeal. Taking the nature of allegations, the offence for which conviction is recorded, the circumstances in which incident has took place, relief as prayed deserves to be granted.

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant Amol s/o Sudhakar Waghmare in Session Case No. 39 of 2021 by the learned Additional Sessions Judge, Osmanabad on 12.12.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.30 of 2024.
- (iii) The applicant be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) with two solvent sureties in the like amount.
- (iv) The applicant shall not commit any criminal activity.
- (v) The applicants shall not enter the vicinity of village Chivari, Tq. Tuljapur, Dist. Osmanabad, without prior permission of this Court, till disposal of the appeal.

- (vi) 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.
- (vii) 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.
- (viii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)