



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 220 OF 2024
IN CRIMINAL APPEAL NO.20 OF 2021**

Ajinath Raosaheb Thombre

... Applicant

Versus

The State of Maharashtra

... Respondent

...

Mr. N. L. Jadhav, Advocate for the Applicant

Mr. S. D. Ghayal, Addl. P.P. for the Respondent – State

Mr. A. D. Ostwal, Advocate for the Appellants in Appeal
Nos.19/2021 & 20/2021

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**CORAM : R.G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

DATE : 14.02.2024

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Ahmednagar, in Sessions Case No.411/2016 vide Judgment and Order dated 11/11/2020, thereby convicting him for the offences punishable under Section 302 read with Section 120-B of the Indian Penal Code [for short 'IPC'] and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, R.I. for six months and to suffer R.I. for seven years and pay fine of Rs.7000/-, in default, R.I. for three months under Section 120-B of IPC.

2. Heard Mr. Jadhav, learned Advocate for the Applicant and Mr. Ghayal, Addl. P.P. for the Respondent – State. Perused the papers on record.

3. It is the Prosecution case that on 13.09.2016, the Informant - witness and deceased were travelling on the motorcycle. When they reached at Imampur Ghat near Hanuman Hotel on Nagar – Aurangabad Highway, the Informant - witness heard the shouts of firearm and when he turned back, he saw that the deceased, who was the pillion rider, had fallen down. The assailants were three (3) in number and on motorcycle. The injured succumbed to the injuries. The FIR was lodged and the Applicant along with others came to be arrested. The learned trial Court convicted all the accused persons.

4. What is not in dispute, is that the co-accused to whom the role of conspiracy has been attributed is granted bail. It is further not disputed and what is clear from the evidence on record that, the identity of the Applicant as the assailant has not been established, as the assailants had covered their faces. The only evidence against the Applicant is discovery / recovery of the country made pistol under Section 27 of Indian Evidence Act and forensic evidence to show that the bullet which was fired was from the firearm seized at the instance of the Applicant. However, the question remains as to whether it was the Applicant who had fired the bullets from the said pistol. Prima facie, there appears no evidence to that effect. The other piece of evidence brought on record by the Prosecution is CCTV Footages which are of the place at some distance from the spot of incident wherein the assailants are identified on the basis of colour of clothes. The Applicant is behind the bars since more than 7½ years. There is no possibility that the Appeal would come up for final hearing in near future.

5. Considering all these aspects, we proceed to pass the following order:

ORDER

(I) Criminal Application is allowed.

(II) The substantive sentence imposed by the learned Additional Sessions Judge, Ahmednagar vide Judgment and Order dated 11.11.2020 on the Applicant/Appellant, namely, Ajinath Raosaheb Thombre, is suspended during the pendency of Appeal.

(III) The Applicant/Appellant be released on bail on furnishing P.R. Bond of Rs.15000/- [Rupees Fifteen Thousand Only] with surety in the like amount.

(IV) Bail before the Trial Court.

6. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer