



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.461 OF 2024
IN CRIMINAL APPEAL NO.101 OF 2024

Fayyaz Raju Pathan

.... Applicant

VERSUS

The State of Maharashtra

..... Respondent

.....

Mr. Satej S. Jadhav and Mr. Chudiwal Niraj Pradeep, Advocate for
the Applicant

Mrs. V. S. Choudhari, APP for Respondent - State

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

DATE : 03.05.2024

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Aurangabad, District Aurangabad, vide Judgment and Order dated 05/12/2023 passed in Sessions Case No.396/2022, convicting the Applicant for the offence punishable under Sections 302, 324 and 506 of the Indian Penal Code [For short 'IPC'].

2. Heard the learned Advocate for the Applicant and learned APP for the Respondent – State.

3. It is the case of Prosecution that the deceased i.e. Shaikh Naseer Shaikh Bashir and his friends were sitting on the ground of Foster School. The Applicant came there with a beer bottle and said that he will eliminate all. The deceased was assaulted with the beer bottle. The deceased died after seven days [07] from the date of assault. The cause of death as per the medical evidence is due to 'cerebral necrosis with septicemia in an operated case of

penetrating injury to vital neck structures'. During the course of investigation, it was revealed that, the Applicant caused the injuries, which proved fatal for the deceased.

4. It is submitted by the learned Advocate for the Applicant that the witnesses examined by the Prosecution as the eye witnesses did not support the Prosecution's case. He submits that there are only two incriminating circumstances against the Applicant i.e. the blood stains of the deceased on the clothes of the Applicant and CCTV footage that the Applicant purchased beer from the beer shop in the vicinity of the incident. He submits that even if the said circumstances are taken as it is, that would not be sufficient to maintain the conviction. He, therefore, submits that the Application may be allowed.

5. The Application is vehemently opposed by the learned APP. She submits that in the statement under Section 164 of Cr.PC, the eye witnesses have named the Applicant as the assailant. She submits that the incriminating circumstances show the involvement of the Applicant in the crime. She, therefore, submits that the Application may be rejected.

6. We have perused the papers on record. There is no dispute that only incriminating circumstances against the Applicant are as follows:-

“(i) The blood stains of the deceased on the clothes of the Applicant and;

(ii) The evidence in the nature of CCTV footage that the Applicant purchased beer bottle three hours before the incident.”

7. The evidence show that the batch number of the beer bottle which was purchased by the Applicant and the batch number of

beer bottle (broken) found on the spot of incident was similar. Whether the aforesaid two circumstances would be sufficient to maintain the conviction, would be examined at the time of hearing. If we see the evidence in the nature of Section 27 of the Evidence Act, 1872 [For short 'the Evidence Act'], the substantive evidence is silent as to what place was disclosed by the Applicant. Therefore, whether the said discovery would strictly fall within the ambit of Section 27 of the Evidence Act, is the matter of appreciation in the light of recent Judgment of the Hon'ble Apex Court in the case of **Babu Sahebagouda Rudragoudar and Others Vs. State of Karnataka; MANU/SC/0329/2024**. The Appeal is of the year 2024 and there is no possibility that the Appeal would be taken up for final hearing in near future. The Applicant is behind the bars for two years.

8. In view of the above, we proceed to pass the following order:

ORDER

- (i) The Criminal Application is allowed.
- (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Aurangabad, District Aurangabad, vide Judgment and Order dated 05/12/2023 on the Applicant, namely, Fayyaz Raju Pathan, is suspended during the pendency of the present Appeal.
- (iv) The Applicant be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- [Rupees One Lakh only] with one or two sureties in the like amount.
- (v) Bail before the Trial Court.

9. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]