

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

903 CRIMINAL APPLICATION NO.1239 OF 2024
IN
CRIMINAL APPEAL NO.270 OF 2024

Vijaykumar Narayan Panchal

..Applicant

Versus

The State of Maharashtra

..Respondent

Advocate for Applicant

.....

: Mr. Ameya N. Sabnis

APP for Respondent / State

:

Smt. S. N. Deshmukh

.....

CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : APRIL 10, 2024

PER COURT :-

1. This is an Application for suspension of substantive sentence awarded by the learned Additional Sessions Judge, Udgir in Sessions Case No.86 of 2019 vide Judgment and Order dated 27.02.2024 convicting the Appellant / Applicant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for Life and to pay fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for One month.

2. It is submitted by the learned Advocate for the Applicant / Appellant that the incident occurred due to quarrel between the Applicant and the deceased, as the deceased had gone to the Applicant's

house to pacify the quarrel. He further submits that in the evening the Applicant was quarreling in front of the house of the deceased and again quarrel had taken place between the Applicant and the deceased as the deceased asked the Applicant as to why he was quarreling in front of his house. In that quarrel, the Applicant pushed the deceased, who sustained injury on his backside of the head. He further submits that there was no intention to commit the murder. He submits that the evidence on record show that the conviction could be scaled down to Section 304 of the IPC. He submits that the Applicant was on bail during trial.

3. The Application is opposed by the learned APP. She submits that there are four eye witnesses to the incident. She submits that the evidence on record show that during the quarrel the Applicant caught hold collar of the deceased and struck him on the stone and put his knees on the chest of the deceased. She submits that though no weapon is used, the intention can be attributed to the Applicant. She submits that at this stage no appreciation of the evidence can be done as per settled position in law.

4. We have heard both the sides and perused the evidence on record. Admittedly, the incident is not the result of premeditation. What the evidence on record go to show is that in the morning quarrel

was going on in the house of the Applicant with his wife and the deceased had gone to his house along with his wife to specify the same. At that time deceased had called the Applicant as drunkard. In the evening again, the Applicant was found quarreling in front of the house of the deceased and so, the deceased questioned him about the same. Again quarrel took place between the Applicant and the deceased and the Applicant caught hold the collar of the deceased and struck him on the stone and thereafter put his knees on the chest of the deceased. This clearly show that the incident occurred out of quarrel. Admittedly, except penetrating injury on occipital region, there were no external injuries on the deceased. The Applicant was on bail during the Trial. There is no possibility that the Appeal would come up for final hearing in the near future. In this view of the mater, we find *prima facie* case to suspend the sentence of the Applicant and proceed to pass the following order.

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Udgir in Sessions Case No.86 of 2019 vide Judgment and Order dated 27.02.2024 on Applicant - Vijaykumar Narayan Panchal, is suspended during the pendency of the Appeal.
- (iii) Applicant be released on bail on furnishing P. R. Bond of

Rs.15,000/- (Rupees Fifteen Thousand Only), with one surety in the like amount.

(iv) Bail before the Trial Court.

5. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP