



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

904 CRIMINAL APPLICATION NO.1746 OF 2024
IN APEAL/399/2024

Ghungrusingh Jagbirsingh Tak

..Applicant

Versus

The State of Maharashtra

..Respondent

.....

Advocate for Applicant

:

Shri. Nilesh S. Ghanekar

APP for Respondent / State

:

Smt. S. N. Deshmukh

.....

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

Dated : May 07, 2024

PER COURT :-

. This is the Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge-1, Nanded in Sessions Case No.15/2022 *vide* Judgment and Order dated 15.04.2024 convicting the Applicant and Co-convicts for the offence punishable under Sections 307, 324, 323, 504, 506, 143, 147, 148 r/w. Sec.149 of the Indian Penal Code.

2. In nutshell, the case of Prosecution is that, the Applicant and the Co-convicts assaulted one Sanjay Devkar - Informant and his father by means of Sword and attempted to kill. The Informant and his father suffered injuries for which they were hospitalized. The criminal law was

set into motion and after the Trial, the Applicant and co-convicts came to be convicted.

3. It is submitted by the learned Advocate for the Applicant that none of the eye witnesses supported the case of Prosecution. The learned Trial Court convicted the Applicant on the basis of the statement recorded under Sections 161 and 164 of the Code of Criminal Procedure. He submits that there is no substantive evidence against the Applicant so as to maintain the conviction.

4. Learned APP submits that the learned Trial Court considered the statement recorded under Section 164 of the Cr.P.C. wherein the involvement of the Applicant and co-convicts is established. She submits that the Informant who is the injured witness admitted his signature on the Report and on the Statement recorded under Section 164 of the Cr.P.C.

5. The eye witnesses to the incident have not supported the case of Prosecution. Nothing is brought in their cross-examination which would further the case of Prosecution. There is no substantive evidence on record in support of the Charge. It is needless to state that the statement under Section 161 and 164 of Cr.P.C. cannot take place of substantive evidence. In this view of the matter, we proceed to pass the

following order:

ORDER

- (i) The Application is allowed.
 - (ii) The substantive sentence imposed by the learned Additional Sessions Judge-1, Nanded in Sessions Case No.15/2022 *vide* Judgment and Order dated 15.04.2024 on the Applicant - Ghungrusingh Jagbirsingh Tak, 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.
6. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP