



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

**CRIMINAL APPLICATION NO.1696 OF 2023 IN
CRIMINAL APPEAL NO.583 OF 2023**

Khaled Abu Turab

... APPLICANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. Satej S. Jadhav, Advocate for applicants
Mrs. Uma S. Bhosle, A.P.P. for respondent
.....

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

DATE : 6th MAY, 2024

ORDER :

This is an application for suspension of sentence awarded by learned Additional Sessions Judge, Court No.8, Aurangabad in Sessions Case No.712/2019, vide judgment and order dated 31/1/2023, convicting the applicant/ appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5000/-, in default to suffer S.I. for 6 months. He is also convicted for the offences punishable under Sections 143, 144,147, 148 of the Indian Penal Code and

sentenced to various terms of sentences and fine with default stipulation. The substantive sentences have been directed to run concurrently.

2. The case of the prosecution in nutshell is that, there was a dispute over the ownership of one factory namely Golden Ice Factory and Noor Enterprises, situated at M.I.D.C. Shendra, Arangabad. The said dispute was between the two groups. According to the prosecution, the applicants and co-convicts reached the said disputed factory on 1/5/2019 by 8.00 p.m. and assaulted the informant and his brother by using knife. Due to the assault by the applicant, the informant's brother died.

3. It is submitted by learned counsel for the applicant/appellant that, the applicant and the co-convicts were already present in the said disputed factory premises and the deceased and the informant came to the said factory and raised quarrel. He submits that, a fight took place in the two groups comprising of the informant and witnesses on one side and the applicant and the co-convicts on the other side. He submits that, the applicant also got severely injured in the said

incident and he had gone to the Police Station for lodging the report. However, the police referred him to the hospital. He submits that, there is a case and cross-case out of the same incident. He submits that, in the case registered on the report lodged by the applicant against the complainant, the witnesses did not support and the case resulted in acquittal. He submits that, the applicant exercised his private defence though it may have exceeded. He submits that the applicant be granted bail by suspending the sentence.

4. The application is opposed by the learned A.P.P. She submits that, there are eye witnesses to the incident, who have attributed positive role of assault to the applicant. She submits that, the applicant and co-convicts came in the said factory. She submits that, there are no chances of acquittal in the case and the application be rejected.

5. We have perused the evidence on record. What is not in dispute is that, the CDR reports indicate, which were collected by the investigating officer, that the informant was in Aurangabad city and reached at the spot at about at 8.00 p.m. The CDR further show that the applicant was present at the

said factory from 14.32 Hrs. till 20.37 Hrs. From this, prima facie it is seen that the applicant was already present in the said factory and the informant had gone there. The CDR further show that, the applicant was present at the said factory. It is also not in dispute that, the applicant suffered injuries on the face and neck in the said incident. It is also not in dispute that the persons who were in the company of the applicant also suffered severe injuries on head. It is not known as to who was the aggressor. The applicant is behind the bars since 2/5/2019 i.e. for a period of more than 5 years. There is no possibility that the appeal would be finally heard in near future. In this view of the matter, we proceed to pass the following order :-

ORDER

- (i) The Criminal Application is allowed.

- (ii) Pending the appeal, the substantive sentences of imprisonment imposed against the applicant/ appellant by learned Additional Sessions Judge, Court No.8, Aurangabad in Sessions Case No.712/2019, vide judgment and order dated

31/1/2023 to stand suspended and the applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-