



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

**CRIMINAL APPLICATION NO. 2337 OF 2024
IN CRIMINAL APPEAL NO. 1131 OF 2023**

Ajay Bhagwan Mane

....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....

Mr. Gangakhedkar Shailendra S, Advocate for Applicant
Dr. Kalpalata Patil Bharaswadkar, Addl. for Respondent – State
Mr. S. S. Kazi, Advocate for the Informant [assist to PP]

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

DATE : 19.12.2024

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge-1, Nanded, District Nanded, vide Judgment and Order dated 03/11/2023, passed in Sessions Case No.90/2021, convicting the Applicant for the offence punishable under Sections 302, 392 read with Section 397 and Section 394 read with Section 34 of the Indian Penal Code [For short 'IPC'] and sentencing him to suffer imprisonment for life and to pay fine of Rs.50,000/-, in default of payment of fine, to suffer rigorous imprisonment for a period of two [2] years, to suffer rigorous imprisonment for ten [10] years and to pay fine of Rs.5000/-, in default of payment of fine, to suffer rigorous imprisonment for a period of six [6] months and also to suffer rigorous imprisonment for ten [10] years and to pay fine of Rs.20,000/-, in default of payment of fine, to suffer rigorous imprisonment for a period of one [1] year, respectively.

2. The case of Prosecution in brief, as revealed from the papers on record, is that, the Informant i.e. PW - 1 [Yunuskhan Gulabkhan Pathan] in the midnight of 31/12/2020 was transporting vegetables in Eicher Tempo. When he reached near Vishnupuri, Nanded, he stopped his vehicle and called his nephew - Shaikh Avez [PW - 2] to collect the vegetables by giving phone call. Within a short time, PW - 2 - Shaikh Avez and his uncle Deceased Naim Shaikh reached near his vehicle on a two wheeler. While the Deceased and PW - 2 - Shaikh Avez were standing on the left side of his vehicle and the Informant was handing over the bag of vegetables to them, they heard some noise from the rear side of the vehicle. Therefore, the Informant, Deceased and PW - 2 - Shaikh Avez went towards the back side of the vehicle and noticed that, one boy was removing the crates of vegetables from his vehicle. The Informant enquired with the said boy. In the meanwhile, three [3] to four [4] more persons arrived on the spot and two of them were holding daggers in their hands. There was scuffle between the said four [4] persons with the Informant. The Deceased intervened and resisted the said scuffle. The Applicant assaulted the Deceased on the head with the back side of the handle of dagger. The Deceased suffered injuries. The assaulters fled from the spot. The PW - 2 - Shaikh Avez made a phone call to his brother - Parwej Shaikh, who reached on the spot with three [3] others. They all shifted the injured to the Hospital. After a period of twenty four [24] hours, PW - 1 [Yunuskhan Gulabkhan Pathan] lodged the report and Crime came to be registered against the Applicant and three [3] others, who were juvenile in conflict with law. The injured succumbed to the injuries while under treatment.

3. It is submitted by the learned Advocate for the Applicant that,

even if the case of Prosecution is accepted as it is, it is clear that, the role attributed to the Applicant is a single blow by the back side of the handle of dagger on the head of Deceased. He submits that, the medical history given in the Hospital where injured was taken is that, of assault by unknown persons. He submits that, the Applicant was not known to PW - 1 / Informant. Though the Police Station was barely two [2] kms. from the spot of incident, the report was lodged after twenty four [24] hours. The evidence on record nowhere shows that, the Applicant had any intention to kill the Deceased. The Applicant was merely twenty one [21] years of age at the time of incident. The Appeal would not come up for hearing in near future and the Applicant is behind the bars for little short of four [4] years. Hence, the Application be allowed.

4. The Application is opposed by the learned Addl. PP and the learned Advocate appearing for the Informant. They submit that, the case is based on the testimony of two [2] eyewitness and the Applicant was known to PW - 2 [Avez Shaikh], as he had seen him in the light of street light, therefore, the identity of the Applicant is established. They submit that, the cause of death is Head Injury. They heavily relied upon the observations of the learned Trial Court in Paragraph Nos.29 and 30. They submit that, this is not a fit case to suspend the sentence and the Application be rejected.

5. We have gone through the evidence available on record. It is clear that, the Applicant was not known to PW - 1 [Yunuskhan Gulabkhan Pathan], who is the one of eyewitness. No TIP is held in respect of identification of the Applicant by PW - 1 [Yunuskhan Gulabkhan Pathan]. There is delay of twenty four [24] hours in lodging the report by PW - 1 [Yunuskhan Gulabkhan Pathan] with the Police Station despite Police Station being at the distance of two [2] kms. from the spot of incident. As regard another eyewitness is

concerned, though the evidence of PW – 2 [Avez Shaikh] shows that, he was knowing the Applicant and identified him under the street light, and he with others shifted the injured to the Hospital, the history given at the time of admission in the Hospital was assault by unknown persons. In light of the above evidence, the evidence in respect of involvement of the Applicant in the incident is required to be scrutinized minutely, which would be done at the time of final hearing. The evidence of eyewitness shows that, the assault was not by the sharp side of dagger. The assault was a single blow by the handle of dagger. The cause of death is Head Injury. Therefore, we find prima facie substance in the contention of the learned Advocate for the Appellant that, there was no intention to kill. The Applicant is behind the bars for little short of four [4] years. He was twenty on [21] years of age at the time of incident. There is no possibility that, the Appeal would be heard finally in near future. In this view of the matter, 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-1, Nanded, District Nanded, vide Judgment and Order dated 03/11/2023 on the Applicant / Appellant, namely, Ajay Bhagwan Mane, is suspended during the pendency of the present Appeal.
- [III] The Applicant / Appellant be released on bail on furnishing P.R. Bond of Rs.15000/- [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.]