



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

**CRIMINAL APPLICATION NO.2883 OF 2024 IN
CRIMINAL APPEAL NO.644 OF 2024**

Majhar s/o Yunus Shaikh

... APPLICANT

VERSUS

The State of Maharashtra & anr.

... RESPONDENTS

.....
Mr. Abhay R. Rathod, Advocate for applicant
Mrs. Uma S. Bhosle, A.P.P. for respondent No.1
Mr. Y.L. Bidve, Advocate for respondent No.2
.....

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

DATE : 8th AUGUST, 2024

ORDER :

The respondent No.2 – informant has tendered his affidavit dated 1/8/2024 in support of the application for suspension of sentence and bail. The same is taken on record and marked as Exhibit 'X' for identification.

2. This is an application for suspension of sentence imposed by learned Special Judge (under SC & ST Act) and Additional Sessions Judge, Udgir in Special Case (Atrocity) No.20/2022 by judgment and order dated 22/06/2024,

convicting the applicant/ appellant for the offence punishable under Section 326 of the Indian Penal Code and sentencing to undergo rigorous imprisonment for 5 years and to pay fine of Rs.10,000/-, in default to undergo R.I. for 6 months and further convicting under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentencing to undergo imprisonment for life and to pay fine of Rs.5000/-, in default to undergo R.I. for 3 months. Both the sentences have been directed to run concurrently.

3. The case of the prosecution is that, the victim had taken loan for his autorickshaw. The applicant was a recovery agent of the Finance Company. The applicant was demanding the installments of the loan. On 15/12/2021 a quarrel took place between the applicant and the victim in respect of instalment, which resulted in assault by the applicant on the victim.

4. It is submitted by learned Advocate for the applicant that, considering the medical evidence on record, the punishment of imprisonment for life is clearly disproportionate. He submits that, in the report, the informant/ injured has specifically stated that, he suffered injuries due to fall of

giddiness. He submits that, he is behind bars for a period of two months and 18 days. He submits that, the informant (victim) has filed affidavit giving no objection for suspension of sentence and releasing the applicant on bail.

5. Learned A.P.P. opposes the application. He submits that, due to the assault and considering the medical evidence on record, and the nature of offence, the application be rejected.

6. Learned Advocate for respondent No.2 – informant submits that, the informant has no objection if this Court grants bail to the applicant by suspending the sentences of imprisonment imposed upon him. He placed on record affidavit of the respondent No.2 – victim in support of his contention.

7. We have perused the evidence on record, injury certificate which is at Exh.45, shows following injuries :-

Sr. No.	Name of injury	Site of injury	Margins & Directions	Size of Injury	Simple or grievous	Weapon used	Age of Injury	Remarks
1	Lacerated wound	Rt. forearm	Irregular	1 x 0.5 x 0.5 cm.	Simple (grievous)	Hard	< 12 Hrs.	On X-ray
2	Incised wound	Rt. preauricular area	Irregular	1 x 0.5 cm.	Simple	Sharp		Undisplaced shaft # Rt. Ulna fracture
3	Abrasion	Below Rt. Scapula	---	2 x 1 cm.	Simple			After Ortho. opinion

8. The above injury certificate clearly show that, initially the word 'simple' in Column No.6 is scored and word 'grievous' is written. Admittedly, there are no X-ray report for fracture brought on record by the prosecution. It is further not disputed that the victim – respondent No.2 was never admitted as indoor patient in the hospital. From these aspects, prima facie the punishment in the nature of imprisonment for life appears disproportionate.

9. In view of the above, we are inclined to suspend the sentence imposed upon the applicant and proceed to pass the following order :

ORDER

(i) The Criminal Application is allowed.

(ii) Pending the appeal, the substantive sentences imposed upon the applicant by learned Special Judge (under SC & ST Act) and Additional Sessions Judge, Udgir in Special Case (Atrocity) No.20/2022 by judgment and order dated 22/06/2024

to stand suspended and the applicant be released on bail on his executing P.R. bond in the sum of Rs.50,000/- (Rupees fifty thousand) with one or two sureties in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-