



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

**CRIMINAL APPLICATION NO. 2547 OF 2023
IN APPEAL/597/2023**

Yogesh S/o. Punjaji Phuke
Age: 32 years, Occu.: Nil,
R/o. Fattepur, Tq.Bhokardan,
Dist.Jalna.

....Appellant
(Accused)

Versus

1. The State of Maharashtra
Through Police Station Officer,
Bhokardan, Tq.Bhokardan,
Dist.Jalna.
2. Mayuri Sagar Badar
Age: 25 years, R/o. Walsa – Khalsa,
At present R/o Boregaon Math,
Tal.Georai, Dist.Beed.

.....Respondents

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Advocate for Applicant : Mr. S.S. Thombre
APP for Respondent no.1: Mr.S.M.Ganachari
Advocate for Respondent no.2 :Mr.Kunal R.Yadav h/f. Mr.Sudarshan
J. Salunke
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 15 MARCH, 2024
PRONOUNCED ON : 01 APRIL, 2024**

ORDER :-

1. This is an application for suspension of sentence and grant
of bail on account of conviction recorded by the learned

Sessions Judge, Jalna in Session Case No.218 of 2021 convicting applicant for offence under Section 304 Part I and 324 of the Indian Penal Code (IPC) and to pay fine.

2. In support of relief, learned Counsel for the applicant submitted that crime was registered for commission for offence under Sections 302 and 324 of the IPC, but conviction is for offence under Section 304 Part I and 324 of the IPC. It is submitted that applicant was on bail during trial. Important witnesses have not supported prosecution, but still guilt is recorded. Said judgment is taken exception to by filing appeal bearing no.597 of 2023. There is a good case on merits. However, as much more time would be required to hear and decide the appeal, he prays for suspension of sentence and grant of bail during pendency of the appeal.

3. While opposing relief, learned APP pointed out that it is true that the crime was registered for offence under Sections 302 and 324 of the IPC and conviction was recorded for offence under Sections 304 Part I and 324 of the IPC, however, there is

use of deadly weapon like knife. That there is direct eye witness account. That deceased died before being treated. Moreover, sentence is for ten years and therefore, he prays to dismiss the application.

4. Heard. Perused the papers.

5. Case of prosecution seems to be rested on evidence of in all nine witnesses including informant, who is father of deceased, aged 67 years. There seems to be some previous dispute between deceased and accused. On the date of occurrence, quarrel seems to be have erupted. Allegations are that while settling dispute, accused whisked out knife and stabbed deceased in the stomach. Injured deceased was taken to Bhokardan Government Hospital and thereafter, to Jalna Government Hospital, but before he receive any treatment, he seems to have succumbed.

PW4 Kailash Gajanan Phuke seems to be direct eye witness as deceased was reported to be in his company. He has deposed that while they were talking, present applicant

removed knife and stabbed him with knife, which he caught in the right hand warding off the blow and thereafter, deceased caught hold of accused and one Suryabhan removed knife from hands of applicant requesting deceased to leave. Thereafter, applicant accused had stabbed Sagar in the stomach as a result of which he collapsed. PW6 Dr.Sk.Aarif Khajabhai, who conducted post mortem, has opined death due to hemorrhagic shock.

6. After trial, learned Sessions Judge has held applicant guilty for offence punishable under Section 304 Part I and 324 of the IPC and sentenced him to suffer rigorous imprisonment for ten years and one year respectively for each of the offences.

7. Considering the nature of allegations, nature of crime committed, circumstances in which incident took place, and also taking into account the role attributed to present applicant, I do not consider it a fit case for grant of relief as prayed.

ORDER

Criminal Application No.2547 of 2023 stands
rejected.

(ABHAY S. WAGHWASE)
JUDGE