



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

**CRIMINAL APPLICATION NO.2722 OF 2023 IN
CRIMINAL APPEAL NO.979 OF 2023**

Irwant Nagnathappa Mankari

... **APPLICANT**

VERSUS

The State of Maharashtra

... **RESPONDENT**

.....
Mr. Sachin S. Deshmukh, Advocate for applicant
Mr. S.D. Ghayal, Addl. P.P. for respondent
.....

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

DATE : 19th AUGUST, 2024

ORDER :

This is an application for suspension of substantive sentence imposed by learned Additional Sessions Judge, Udgir, District Latur in Sessions Case No.33/2022, by judgment and order dated 23/2/2023, convicting the applicant/ appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life and to pay fine of Rs.1000/-, in default to suffer R.I. for 1 month.

2. The papers on record show that the case of the prosecution in brief is that, the deceased Baburao Panchal, who was rag picker, was found dead near the urinal at the

State Transport Bus Stand at Udgir. The police came to know about the same. The criminal law was set in motion vide Crime No.0326/2021 registered on 23/11/2021. During the course of investigation, it was revealed that on 23/11/2021 between 2.00 p.m. and 2.30 p.m., the applicant/ appellant assaulted the deceased with stone, which proved fatal. The charge sheet came to be submitted after the investigation was complete, during which the statements of witnesses were recorded. The post mortem was done and articles were sent for chemical analysis.

3. It is submitted by learned Advocate for the applicant/ appellant that, the so called eye witness examined by the prosecution as P.W.4 – Satish, is a planted witness and, therefore, his testimony cannot be made base for recording the conviction. He submits that, no test identification parade was conducted after the applicant/ appellant was arrested though he was not known to P.W.4. It is submitted that, except this, there is no evidence against the applicant/ appellant. He submits that, there is no possibility of the appeal being heard in near future and the application be allowed.

4. The application is opposed by learned A.P.P. He submits that, the case is based on the testimony of P.W.4 who is the eye witness to the incident. He submits that, there is no reason for P.W.4 to depose false against the applicant/ appellant. He

submits that, the learned Trial Court has rightly convicted the applicant/ appellant. He ultimately urged to reject the application.

5. The evidence on record go to show that the incident had taken place in the afternoon hours at the State Transport Bus Stand, which admittedly is a public place having presence of number of people. The place of assault is shown to be the public urinal. Though the evidence of P.W.4 show that the photographs of applicant/ appellant were shown to him and he identified the applicant/ appellant as assailant, there is nothing to show that along with the applicant's photographs, there were photographs of other persons. There is no dispute that no test identification parade was conducted after the applicant/ appellant was arrested. Though the C.A. reports have been brought in the evidence, the result of analyst is shown as inconclusive in respect of blood stains on the shirt of the applicant/ appellant. Admittedly, P.W.4 had not reported the incident to the police. In this view of the matter, we find that this is a fit case for suspension of the substantive sentence. Hence we pass the following order :

ORDER

- (i) The Criminal Application is allowed.

(ii) Pending the appeal, the substantive sentence imposed upon the applicant by learned Additional Sessions Judge, Udgir, District Latur in Sessions Case No.33/2022, by judgment and order dated 23/2/2023 is 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.

(iii) Since the appeal is through Legal Aid, the applicant/ appellant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) and thereafter he shall furnish the surety in the like amount within a period of two (2) weeks from the date of his release.

(iv) Criminal Application No.2722/2023 stands disposed of.

6. List the Criminal Appeal for final hearing on 23rd September 2024.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-