



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4041 OF 2024
IN APEAL/879/2024

Surendra Devram Tangadkar,
Age : 52 years, Occu. : Nil (Prison),
R/o. Tangadi, Post. : Ambikhalsa,
Tal. Sangamner, Dist. Ahmednagar.

... Applicant
(Orig. Accused)

Versus

The State of Maharashtra,
Through Police Inspector,
Ghargaon Police Station, Ghargaon,
Tq. Sangamner, Dist. Ahmednagar.

...Respondent.

.....
Advocate for Applicant : Mr. K. N. Shermale
APP for Respondent - State : Mrs. Chaitali Chaudhari - Kutti
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26 SEPTEMBER 2024

PRONOUNCED ON : 01 OCTOBER 2024

ORDER :-

1. In this application, applicant is praying for suspension of sentence and grant of bail on account of conviction recorded by Additional Sessions Judge, Sangamner, Dist. Ahmednagar in Sessions Case No. 53 of 2020 for offence under sections 307, 326 and 324 of Indian Penal Code (IPC).

2. Learned counsel for applicant submits that, upon trial by judgment and order dated 31.08.2024, present applicant has been held guilty under sections 307, 326 and 324 of IPC. It is pointed out that, maximum sentence awarded is for 5 years. That, applicant was arrested on 17.05.2020 and since then he is behind the bars. That, going by the maximum sentence of five years along with other offences, sentences of which are to be run concurrently, he pointed out that, applicant has undergone almost 4 years, 4 months and some odd days. He pointed out that, there is only one eye witness, but his evidence is full of material omissions. That, incident took place in night time and several persons are named, and therefore, it is doubtful whether present applicant is the main accused as is kept up by the prosecution. He pointed out that, in fact, statement of victim has not been recorded under section 161 of Cr.P.C.. Therefore, there are several good grounds to be contested in appeal, but it being filed recently, it would take long time to be heard and decided, and moreover, applicant having already undergone more than 4 years and 4 months imprisonment, learned counsel prays for suspension of sentence and grant of bail.

In support of his submissions, he relied on following rulings :-

- (i) *Pappu Ganpat Uttekar v. The State of Maharashtra, SLP (Criminal) Diary No(s). 37680 of 2022*
- (ii) *Mossa Koya KP v. State (NCT of Delhi) Criminal Appeal No.1562 (2021) (Arising out of SLP (Crl) No.8647 of 2021)*
- (iii) *Kashmira Singh v. The State of Punjab (1977) AIR (SC) 2147*
- (iv) *Shankar S/o. Lahanu Salunkhe v. The State of Maharashtra Criminal Application No.1942 of 2023*

3. Learned APP strongly opposed on the ground that upon fullfledge trial, applicant is held guilty for attempting to commit murder. That, there are allegations of use of axe that too on vital parts like head and other parts. That, there is recovery as well as medical evidence supporting clearly about life threatening injury. There is eye witness account and therefore, learned APP prays to dismiss the application.

4. After hearing submissions of both sides and on going through the papers, it seems that Crime No.124 of 2020 was entertained by Ghargaon Police Station on report lodged by son of victim. On the basis of above report, crime under sections 307, 326, 324, 143, 147, 148, 188, 269 of IPC, section 37(1)(3) r/w section 135 of Bombay Police Act, section 57 of Disaster Management Act, Section

4 of Epidemic Disaster Management Act and section 11 of Maharashtra Covid-19 Act was registered and in all six accused came to be charge-sheeted including present applicant. Learned trial court conducted Sessions Case No.53 of 2020 which ended up in conviction of only present applicant by judgment and order dated 31.08.2024.

5. The thrust of applicant for relief is that, firstly, there is no convincing evidence or there is weak eye witness account. *Secondly*, statement of victim was recorded at a belated stage and *thirdly*, applicant has already undergone 4 years, 4 months imprisonment out of entire five years sentence for offence under section 307 of IPC.

6. *Prima facie*, on going through the evidence of PW2, who was examined as an eye witness, it transpires that, he was engaged for ploughing field of victim at night. According to him, victim owner of the field was sitting on the ridge of the field, which he was ploughing. That, he heard commotion and ran there and saw victim Popat in injured condition. Witness has also stated about seeing present applicant and others armed with axe and sticks. Witness is very categorical that he spotted present applicant armed with axe. Informant also claims to have come across accused persons while he

was proceeding to the field after receiving telephonic message of victim. Medical evidence i.e. evidence of PW5 Dr. Amol Karpe shows that, victim Popat had suffered fresh injuries i.e. head injury, incise wounds, multiple contusions and lacerated abrasions etc. Consequently, there are injuries on vital part.

7. Perused the rulings of the Hon'ble Apex court taken aid of by learned counsel. In all above rulings, sentence has been suspended and bail has been granted as there were no immediate prospects of hearing the appeal. But, here this court has very few jail appeals and as such this court can hear the main appeal immediately and that too finally as and when appellant desires.

8. In the light of above material and discussion, though applicant has undergone more than 4 years imprisonment, no good ground is made out to extend relief.

9. Accordingly, the criminal application stands rejected.

[ABHAY S. WAGHWASE, J.]