



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

**CRIMINAL APPLICATION NO. 3889 OF 2023
IN
CRIMINAL APPEAL NO. 502 OF 2021**

Kalu @ Arbaj Raju @ Feroz KhanApplicant

VERSUS

The State of MaharashtraRespondent

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**WITH
CRIMINAL APPEAL NO.158 OF 2024
WITH
CRIMINAL APPEAL NO. 502 OF 2021**

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Mr. N. S. Ghanekar, Advocate for Applicant
Ms. U. S. Bhosle, APP for Respondent – State
Mr. Rajendra Deshmukh [Senior Advocate] a/w Mr. Vishal A.
Chavan i/b Mr. D. R. Deshmukh, Advocate for the Applicant /
Informant in Appeal No.158/2024

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**CORAM : R.G. AVACHAT &
NEERAJ P. DHOTE, JJ.**
DATE : 04.03.2024

PER COURT :

1. This is an Application for suspension of substantive sentence awarded to the Applicant / Appellant by the learned Additional Sessions Judge, Beed, District Beed, in Sessions Case No.159/2017 vide Judgment and Order dated 21.09.2021.

2. Heard Mr. Ghanekar, the learned Advocate for the Applicant, Ms. Bhosle, learned APP for Respondent – State and Mr. Deshmukh, learned Senior Advocate for the Informant. The parties have taken us through the relevant evidence on record.

3. In nutshell, the case of Prosecution is that, the deceased was running a gymnasium. The accused persons were his customers. Since the accused persons were not paid the fees of gym, the deceased demanded the fees from them. On that count, the accused persons assaulted the deceased. Due to the injuries suffered by the deceased, he succumbed to the injuries.

4. In all seven (07) accused persons were Charge-sheeted. Out of seven (07), four (04) accused persons have been acquitted by the Trial Court. Out of remaining three (03) accused persons, who have been convicted, two (02) accused persons have been granted bail by this Court. Undisputedly, the fatal blow was one with the knife. The role attributed to the Applicant / Appellant is that he gave a single fatal blow. The case is based on two eye witnesses account. It is brought to our notice that the said two eye witnesses i.e. PW - 2 [Yunus Khan] and PW - 3 [Ayub Khan] are the chance witnesses and they are related to the deceased. PW - 1 [Dastgir Khan], who is the Informant, is not the eye witness. Though neither PW - 2 [Yunus Khan] and PW - 3 [Ayub Khan], who were related to the deceased, did not inform the Police about the incident nor they took the injured to the Hospital. The explanation given by them is that they were in shock. Whether the said two witnesses are to be believed or not will be considered at the time of final hearing.

5. The Applicant / Appellant is behind the bars for last more than 7 ½ years. There is appeal by the Informant against acquittal of four (04) accused. Appeal against acquittal is yet to be admitted. It is not in dispute that the present Appeal, which is against the conviction and the Appeal against acquittal, will have to be heard together. Therefore, there is no possibility that this Appeal would come up for hearing in near future.

6. In this view of the matter, we proceed to pass the following order:

ORDER

(I) Criminal Application is allowed.

(II) The substantive sentence imposed by the learned Additional Sessions Judge, Beed, District Beed, in Sessions Case No.159/2017 vide Judgment and Order dated 21.09.2021 on the Applicant / Appellant, namely, Kalu @ Arbaj Raju @ Feroz Khan, is suspended during the pendency of 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.

7. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer