



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

**CRIMINAL APPLICATION NO.4326 OF 2023 IN
CRIMINAL APPEAL NO.397 OF 2019**

Pappu @ Nagraj s/o Sudhakar Mahajan... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Mr. Deepak D. Choudhari, Advocate for applicant
Mrs. S.N. Deshmukh, A.P.P. for respondent
.....

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

DATE : 29th APRIL, 2024

ORDER :

Heard. This is an application for suspension of sentence awarded by learned Additional Sessions Judge, Jalgaon in Sessions Case No.69/2015, vide judgment and order dated 5/5/2018, convicting the applicant and the co-appellants for the offence punishable under Sections 302, 120-B, 201 of the Indian Penal Code.

2. Learned counsel for the applicant brings to our notice the order dated 22/8/2022, passed by the Hon'ble

Supreme Court of India in Special Leave Petition (Criminal)

Diary No.16630/2022, by which the following order is passed :

“We are not inclined to condone the delay.

The impugned order was passed on 26/04/2019 rejecting the bail application and if the appeal of the petitioner has not been heard, the appropriate remedy ought to have been to move the High Court in a fresh bail application.

The Special Leave Petition is accordingly dismissed on delay.

Pending applications stand disposed of.”

3. We have heard learned counsel for the applicant and learned A.P.P. for the State. Perused the papers on record.

4. It is the case of the prosecution that, co-accused hatched conspiracy and hired the applicant and co-convict to kill the deceased Balu Patil. It is submitted by the learned counsel for the applicant that, the case is based on circumstantial evidence and the only evidence against the applicant is last seen and recovery of bamboo, which is not stained with blood. It is submitted that, the applicant is behind the bars for more than 7 ½ years and the appeal would not be

heard in near future since the appellants in other appeals are on bail. He submits that, the application be allowed.

5. The application is vehemently opposed by learned A.P.P. It is submitted by her that, there are witnesses who have lastly seen the applicant in the company of the deceased. It is further submitted that, the bamboo used in the assault has been recovered and seized at the instance of the applicant. She submits that, the amount of Rs.12,900/- was seized from the applicant, which was part of contract money. She submits that, this evidence is sufficient to nail the applicant, and the first application for suspension of sentence is rejected.

6. It is true that, the previous application No.1026/2019 preferred by the applicant before this Court for suspension of sentence has been turned down by order dated 26/4/2019. However, it is equally true that, pursuant to the above directions of the Hon'ble Supreme Court of India, this application is moved.

7. Admittedly, the case is based on circumstantial evidence. It is not in dispute that the co-convict has been

granted bail. The case is based on the evidence of P.W.13, who had lastly seen the applicant with the deceased. However, the statement of this witness is recorded on 16th day from the date of last seen. The evidence of this witness show that, though in the examination-in-chief this witness i.e. P.W.13 has deposed that he saw the applicant and deceased at the petrol pump at 8.00 p.m. on 30/1/2015 as he was working on the said petrol pump, in his cross-examination he deposed that his duty was completed at 9.00 a.m. of 30/1/2015. His cross-examination further shows that, he resumed his duty on petrol pump at 9.00 a.m. on 01/02/2015. From this cross-examination, the evidence of this witness that he was present on the petrol pump at 8.00 p.m. of 30/1/2015 becomes shaky. Though the evidence on record show that one bamboo was seized at the instance of the applicant, there are no blood stains found on the said bamboo so as to connect it with the crime. From this evidence on record, in our prima facie view, the applicant has arguable case on merits. The applicant is behind the bars for actual period of more than 7 ½ years. There are appeals of co- convicts who are on bail. There is no likelihood that the appeal would be finally heard in near future. Under such circumstances, we are inclined to allow the

application. Hence we pass the following order :

ORDER

(i) The Criminal Application is allowed.

(ii) Pending the appeal, the substantive sentence of imprisonment imposed against the applicant by learned Additional Sessions Judge, Jalgaon in Sessions Case No.69/2015, vide judgment and order dated 5/5/2018 to stand 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.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-