

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

CRIMINAL APPLICATION NO. 4619 OF 2023
IN
CRIMINAL APPEAL NO.631 OF 2023

Subhash Daji Gavit

..Applicant

Versus

The State of Maharashtra

..Respondent

.....
Advocate for Applicant : Shri. Avishkar S. Shelke
A. P. P. for Respondent / State : Smt. U. S. Bhosle

...

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

Dated : APRIL 3, 2024

PER COURT :-

. This is the Application for suspension of substantive sentence awarded by learned Sessions Judge, Nandurbar in Sessions Case No. 38/2015 vide Judgment and Order dated 26.08.2019 convicting the Applicant for the offence punishable under Sections 302 and 324 of the Indian Penal Code and sentencing him to suffer Imprisonment for Life and to pay fine of Rs.10,000/- (Rs.Ten Thousand Only), in default to suffer Simple imprisonment for Six (06) Months for the offence punishable under Section 302 of the IPC and to suffer Rigorous Imprisonment for One Year and to pay fine of Rs.1,000/- (Rs.One Thousand Only), in default to suffer Simple Imprisonment for One (01) Month for the offence punishable under Section 324 of the

IPC.

2. It is submitted by the learned Advocate for the Applicant / Appellant that there was no premeditation and the incident occurred due to the sudden fight. He submits that the witnesses and the deceased had gone to the house of the Applicant / Appellant to question him which resulted in heated quarrel and in a fit of anger the Applicant / Appellant went inside his house, brought an axe and assaulted the deceased. He further submits that the evidence on record would show that the offence would not be of murder and it would fall in the exceptions.

3. Learned APP opposed the Application. She submits that the Applicant / Appellant went inside his house and brought axe which is the deadly weapon and gave two (02) blows in the head of the deceased which show his intention to kill. She submits that the case is based on the testimony of the eye witnesses and Applicant has been rightly convicted for the offence of murder.

4. The case is based on the testimony of two (02) eye witnesses. It is clear from the testimony of the eye witnesses that the deceased and the witnesses had gone to the house of the Applicant / Appellant to question him in respect of the subject, which was discussed in the meeting. The evidence show that there was quarrel and the Applicant went inside his house, brought the axe and gave two (02)

blows in the head of the deceased. The evidence on record do not show any premeditation to commit the offence. The Applicant is aged 64 years and he is behind the bars for more than 4 ½ (four and half) years. There is no possibility that the Appeal would be heard finally in the near future. Considering these aspects, the following order is passed.

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence imposed by learned Sessions Judge, Nandurbar in Sessions Case No. 38/2015 vide Judgment and Order dated 26.08.2019 on the Applicant - Subhash Daji Gavit, is suspended during the pendency of the Appeal.
- (iii) Applicant be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only), with one surety in the like amount.
- (iv) Bail before the Trial Court.

5. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP