

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 297 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 41 OF 2024**

Deepak Tukaram Aware ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr. N.V. Sawant, Advocate for the Applicant.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd JANUARY, 2024.

P.C.:

1. Not on Board. Taken on Board.
2. Heard both sides.
3. The Applicant is convicted vide Judgment and Order dated 31st January, 2018 passed by learned J.M.F.C. Second Court, Thane in R.C.C. No.52 of 2012 for offence punishable under Section 353 of Indian Penal Code (for short 'IPC') and sentence to suffer rigorous imprisonment for two years and to pay a fine of Rs.5,000/-. The Applicant is acquitted for an offences under Sections 143, 147, 332 and 506(2) r/w 34 of IPC. The Appeal was preferred challenging the trial Court's Judgment before the Court

of Sessions. Vide Judgment and Order dated 7th January, 2024 the Appeal is dismissed. The Applicant is taken in custody in same day.

4. It is the case of the prosecution that all the Accused in furtherance of common intention caused hurt to the public servant while he was discharging his duty.

5. Learned Advocate for the Applicant submitted that the sentence of imprisonment is of short term. The trial Court Judgment suffers from serious infirmities. The Appellate Court has mechanically confirmed the Judgment of conviction. About 26 persons were prosecuted. All the other Accused were acquitted by the trial Court. The evidence of the prosecution suffers from serious infirmities. The Applicant is in custody from 17th January, 2022. The Applicant was on bail during the trial as well as during the pendency of Appeal. The Applicant has not misuse the facility of bail.

6. Learned APP submitted that there are two concurrent findings of conviction. The revisional Court has limited scope for appreciation of evidence. There is sufficient evidence to convict the Applicant.

7. The prosecution was lodged against 26 persons alleging that they have committing offences under Sections 353, 143, 147,

332, 506(2) r/w 34 of IPC. The 25 persons were given benefit of doubt and they were acquitted. The Applicant is the only person who has been convicted for offence under Section 353 of IPC. The Applicant is acquitted for the offences under Sections 143, 147, 332 and 506(2) of IPC. The Applicant was on bail during the trial. He is in custody from 17th January, 2022. Considering the aforesaid circumstances, the sentence of imprisonment can be suspended and bail can be granted to them.

ORDER

- i. Interim Application No.297 of 2024 is allowed;
- ii. The substantive sentence of imprisonment imposed vide Judgment and Order dated 31st January, 2018 passed by learned J.M.F.C. Second Court, Thane in R.C.C. No.52 of 2012 and confirmed by Additional Sessions Judge, Thane Court in Criminal Appeal No.52 of 2018 vide Judgment and Order dated 17th January, 2024 is suspended and the Applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii. The Applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of six weeks in lieu of surety.

- iv.** The Applicant shall attend the concerned Police Station once in three months on first Saturday of the month 11:00 a.m. to 1:00 p.m.
- v.** Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)