

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

CRIMINAL APPEAL NO. 382 OF 2024
WITH
INTERIM APPLICATION NO. 1527 OF 2024
WITH
INTERIM APPLICATION NO. 1529 OF 2024
IN
CRIMINAL APPEAL NO. 382 OF 2024

Dipak Mahadev Tomake ...Appellant

Versus

The State Of Maharashtra And Anr. ...Respondents

Mr. Sandeep Karnik for the Appellant.

Mrs. M. R. Tidke, APP for the Respondent-State.

Balu Hanumant Pujari, Respondent No.2 present.

CORAM : KISHORE C. SANT, J.

DATE : 9th MAY, 2024

P.C.:-

1. The injured PW-3 is present in the Court. This Court has directed learned App to take instructions and make submissions on his behalf also.

2. Heard the parties. This application is for suspension of sentence and for release of the Applicant on bail. The Applicant is held guilty of the offence punishable under Sections 307 of the Indian Penal Code (for short 'IPC') and is sentenced to suffer rigorous imprisonment for 5 years and pay of fine Rs.1,00,000/- in default of to suffer simple imprisonment for 3 months

3. Learned Advocate submits that the sentence is only of 5 years. Applicant was in jail from 27th November, 2017 till 30th August, 2018 i.e. for more than months and from the date of Judgment i.e. 3rd May, 2024 till now. The appeal is not likely to be heard on merits in near future. He submits on merits that the evidence of PW-2 victim, the injured witnesses only show that the Applicant had assaulted with the iron rod. He hit the iron rod on the head for Balu Pujari of PW-2 Mahendra Marne and thereafter, ran away. Taking thus evidence as it is no case is made out under Section 307 of IPC.

4. The learned APP vehemently opposes the application stating that there is clear evidence recorded against the Applicant. The learned Court has rightly appreciated the evidence. The medical evidence corroborates the ocular evidence. She submits that from medical evidence it is clear that the injured witness has received serious injury and he lost vision of one eye PW-2 Mahendra. There are criminal antecedents and prays for rejection of the bail application. This Court has considered the submission, the main consideration is that the sentence is a short sentence. There are criminal antecedent however by considering the same this Court was pleased to grant bail to the Applicant during the trial by Order dated 14th August, 2018 in Criminal Application No.1443 of 2018. In the said order it is considered from the Applicant was acquitted from the said case i.e. RCC No.301 of

2014. By considering the pendency of the matters, it is not likely that the matter would be taken and for final disposal within near future. Thus, considering this Court is inclined to allow the application.

ORDER

- i. Interim Application No.1527 of 2024 is allowed;
- ii. The substantive sentence awarded by the learned Additional Sessions Judge, Pune by Judgment and Order dated 3rd February, 2024 in Sessions Case No.189 of 2018 stands suspended, subject to deposit of fine amount.
- iii. The Applicant shall be released on bail on furnishing P.R. bond and solvent surety in the sum of Rs.15,000/-.
- iv. The Applicant shall not contact in any way any of the witnesses and the informant.
- v. The Applicant shall furnish residential address and contact details. In case of changes to report immediately to the Police Station.
- vi. The Applicant shall mark his presence before the concerned Police Station once in month on every 3rd Sunday between 11:00 a.m. to 1:00 p.m. starting from May, 2024.
- vii. In case there is breach of condition this order shall be liable to be cancelled.

- viii. Application stands disposed off.
- ix. Both the Applications stand disposed off.

(KISHORE C. SANT, J.)