

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3299 OF 2023
IN
CRIMINAL APPEAL NO. 1004 OF 2023

Jayesh Hiranman Dive ... Appellant/Applicant
V/s.
State of Maharashtra and Anr. ... Respondents

Mr. Aniket Nikam, I.by Mr. Amit Icham, for the appellant.
Mrs. M.R. Tidke, APP, for the State.

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CORAM : KISHORE C. SANT, J.

DATE : 8TH FEBRUARY, 2024.

PC:

1. At the outset learned advocate for the applicant seeks leave to delete the respondent no. 2. Leave granted. Amendment be carried out forth with.

2. Heard learned advocate for the applicant and the learned APP, for the State.

3. This application is for suspension of sentence and release of the applicant on bail in connection with the Judgment and order passed by the learned District Judge and Additional Sessions Judge,

Nashik passed on 11th July 2023 in Sessions Case No 68 of 2017. The present applicant is held guilty for the offences punishable under Section 307 read with section 149 of Indian Penal Code and is directed to suffer R.I. for seven years and to pay fine of Rs. 5000/- in default to suffer further S.I. for one year. He is also convicted for the offence punishable under Section 148 of Indian Penal Code and R.I for three years and to pay fine of Rs. 5000/- in default for further three months. He is also convicted for the offence punishable under Section 7 of Criminal Law Amendment Act and S.I for six months and to pay fine of Rs. 500/- and in default, for one month. The applicant is convicted for the offence punishable under Section 143 and 147 of Indian Penal Code, however no separate sentence is awarded.

4. Learned advocate for the applicant submits that maximum sentence is of 7 years. This appeal is not likely to come up for hearing in near future. Considering that the applicant deserves to be released on bail. On merits, he submits that the mother of the victim who is also eye witness has not mentioned the name of the present applicant. Another witness PW-8 has only stated that this applicant has beaten with a stick. Except that there is no other evidence against the present applicant. Similar case is of the accused no. 18 namely Kiran Nagare who is already released on bail by this Court by order dated 11th January 2024 in Interim Application No. 3242 of 2023. In case of Vyankatesh More, accused no. 17 who is also released on bail by order dated 31st October 2023 in Interim Application No. 2829 of 2023. In this case principle of parity also needs to be considered.

5. Learned APP vehemently opposes the application submitting that the offence is proved against the applicant. The accused persons are persons in Gang and the offence is committed. If the applicant is released on bail there will be threat to the society.

6. This Court has considered the order dated 31st October 2023 in cases of the Venkatesh More and Kiran. The role alleged against present applicant is identical. The sentence awarded is 7 years. The appeal of 2023. It is not likely to be taken up for final hearing in near future. Considering this, this Court is inclined to allow the application. Hence the following order:

ORDER

- i) The application is allowed.
- ii) Substantive sentence imposed by the judgment and order dated 11th July 2023 in Sessions Case No. 68 of 2017 is suspended, during the pendency of the appeal.
- iii) Applicant-Jayesh Dive be released on bail on executing P.R. bond of Rs. 15,000/- and one surety in the like amount. Subject to condition that if the amount of fine is not deposited the same shall be deposited in the trial Court.
- iv) The applicant shall mark his presence before the concerned Police Station once in a month i.e. on every Sunday between 10.00 a.m. to 12.00pm.

v) The applicant shall keep informed concerned Police Station about his residential address, mobile number etc and other contact details.

7. The application stands disposed of.

(KISHORE C. SANT, J)