

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 60 OF 2024
IN
CRIMINAL APPEAL NO.11 OF 2024

Vijay Bhagwan Aaswar
v/s.

.. Applicant

State Of Maharashtra

.. Respondent

Mr. Tapan Thatte a/w. Mr.Akshay Chitre and Mr.Vivek Arote for the Applicant.

Mrs. Kranti T. Hiwrale, APP for the Respondent-State.

*CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.
DATE : 04th JULY, 2024.*

JYOTI
RAJESH
MANE

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P.C. :

- 1) Heard learned counsel for the respective parties.
- 2) By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid Appeal.

3) The applicant vide Judgment and Order dated 9th November 2023 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.223/2016 has been convicted and sentenced as under:-

- For the offence punishable under Section 302 of the IPC to suffer rigorous imprisonment for life and to pay a fine of Rs. 5000/-, in default, to suffer further rigorous imprisonment for 6(six) months.
- For the offence punishable under Section 324 of the IPC to suffer rigorous imprisonment of 1(one) year and to pay a fine of Rs.2000/-, in default, to suffer further rigorous imprisonment of 3(three)months.
- For the offence punishable under Section 452 of the IPC to suffer rigorous imprisonment of 2(two) years and to pay a fine of Rs.2,000/-, in default, to suffer further rigorous imprisonment for 3(three) months.
- The applicant was however acquitted of the offence punishable under Section 307 of the IPC.
- All sentences were directed to run concurrently.

4) Perused the papers. It is the prosecution case, that on 25th February 2016, the applicant assaulted the deceased-Ramchandra Kalappa Jadhav (Applicant's father-in-law) with an iron rod on his head.

According to the prosecution, there was a dispute between the applicant and his wife; that on the day of the incident, the applicant came to his father-in-laws house, where his wife was residing and asked him about the whereabouts of his wife; that on being told she was not at home, the applicant assaulted his father-in-law (the deceased) on his head; and that when the applicants brother-in-law intervened, the applicant bit his left ear. In the said quarrel, that ensued between the applicant on the one hand and the deceased and applicant's brother-in-law on the other, the applicant also received a stab injury in his abdomen. The said assault was with a knife on the applicant, by his brother-in-law.

5) According to the learned counsel for the applicant, since the applicant was attacked, he assaulted his father-in-law (the deceased) and his brother-in-law. He further submitted that in any event, the offence would not be one under Section 302 of the IPC but could be a lesser offence, in as much as, the deceased had only sustained one injury on his head .

6) The applicant is in custody since his arrest i.e. 28th March

2016 for more than 8 years. The Appeal is of the year 2024 and is not likely to be heard in the immediate near future.

7) Considering the aforesaid, the application is allowed and the Applicant's sentence is suspended and he is enlarged on bail, on the following terms and conditions:

ORDER

- (i) The Applicant be enlarged on bail, on executing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The Applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- (iii) The Applicant shall not enter the jurisdiction of Wagle Estate Police Station, Thane, till his appeal is heard and decided.
- (iv) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- (v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High

Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8) The application is allowed in the aforesaid terms and is accordingly disposed of.

9) All concerned to act on the authenticated copy of this order.

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.