



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.2 OF 2024 IN
CRIMINAL APPEAL NO.1 OF 2024

Jitendra S/o Vinod Malik Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.M. Darunde, Advocate for appellant.
Ms Kavita Bhondge, APP for respondent/State.

CORAM : M.W. CHANDWANI, J.

DATE : FEBRUARY 7, 2024.

Heard.

2. By this application, the appellant seeks suspension of sentence passed in Sessions Case No.497/2015 by the learned Additional Sessions Judge-10, Nagpur.

3. Needless to say mention that the appellant has been convicted for the offence punishable under section 326 of the Indian Penal Code (IPC) by the impugned order dated 15.12.2023 passed by the learned Additional Sessions Judge, Nagpur in Sessions Case no.497/2015. The appellant is sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.15,000/-. In default of paying fine, he shall further undergo rigorous imprisonment for further one year.

4. It is contended on behalf of the learned counsel for the appellant that the material witness Dinu Mode has not been examined. He further submits that story put forth by the

witness is improbable. The injured witness has deposed about the alleged injury by means of thermacoll cutter and the weapon of offence is seized as knife. According to him, it is material contradiction which goes to the root of the matter. He further submits that the appellant is sentenced for fixed term. The appeal will take considerable time for its disposal, hence, pending appeal substantive sentence be suspended.

5. Per contra, learned APP vehemently submits that there is sufficient evidence on record and the trial Court has rightly convicted the appellant under section 326 of the IPC on the basis of consistent evidence of witness (PW4) and eye witness (PW9). According to her, there is no merit in the appeal and prays for rejection of the application.

6. Perused the evidence of the victim. It appears that he has deposed about the weapon thermacoll cutter whereas in fact knife has been seized in the crime. Though the trial Court has given reasoning for the same, but the same requires consideration at the time of final hearing of the appeal. An arguable case is made out. The appeal has been convicted for fixed term of four years for the offence punishable under section 326 of the IPC. The appeal may not be heard in near future. The appellant is in jail. In case of acquittal the position will not be reversible. A case is made out for suspension of substantive sentence. Hence, this order.

7. The application is allowed.

8. Pending appeal, the substantive sentence imposed upon the appellant by the Additional Sessions Judge-10, Nagpur by judgment and order dated 15.12.2023 in Sessions Case No.497/2015 is hereby suspended.
9. The appellant - **Jitendra S/o Vinod Malik** shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
10. The appellant shall pay fine amount, if not paid.
11. The appellant shall remain present at the time of final hearing of the appeal.
12. With this, the application stands disposed of.

JUDGE

Wagh