



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO. 181/2024 IN
CRIMINAL APPEAL NO. 99/2024

(Ramu Bhimbahadur Gotame 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

Mr. A. A. Dhawas, Advocate for applicant.
Mr. S. Bissa, APP with Mr. S.S. Doifode, APP for non-applicant/State.

CORAM: VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 22/03/2024.

Heard.

2. This is an application seeking for suspension in execution of substantive sentence passed in Sessions Case No. 285/2020, whereby the Trial Court has convicted the applicant (accused No.2) Ramu for the offence punishable under Section 302 read with Section 34 of the India Penal Code and sentenced to suffer imprisonment for life along with fine.

3. The first information report has been lodged by one Vaibhav who is brother of deceased Kartik. He has stated that on 04.06.2020 around 02.15 pm., he learnt that two unknown persons assaulted Kartik which proved to be fatal. The First Information Report was against unknown persons. Though the prosecution has examined several witnesses, PW-1 Vaibhav is the only eye-witness. We have gone through the evidence of Vaibhav which says that

at the relevant time, two persons came by riding motorcycle. One of them namely Vikram (accused No.1) was pillion rider who assaulted Kartik at his head by means of rod. Further, it is stated that the motorcycle rider was remained seated on motorcycle itself at the time of assault. It reveals that with the aid of Section 34 of the Indian Penal Code, the applicant, a motorcycle rider has been jointly held liable for the offence of murder. Besides that, the learned prosecutor has not pointed any incriminating material against the applicant except chemical analyzer report. We do see that scientific report is against the applicant, however it is a matter of appreciation whether the applicant has shared common intention with co-accused at the relevant time.

4. During the course of trial, the applicant was on bail, Eye-witness though stated specific role of co-accused, however he has not stated the name of motorcycle rider. The learned counsel appearing for defence has attracted our attention to the cross-examination of this witness (para 7), wherein he admits that he has not seen occurrence. Considering the limited role of the applicant and nature of evidence, the matter requires reconsideration.

5. In view of above, we deem it fit to exercise our judicial discretion. Hence, application is allowed, execution of substantive sentence passed against appellant (accused No. 1) Ramu Bhimbahadur Gotame stands suspended till final disposal of appeal.

6. In the meantime, the applicant Ramu Bhimbahadur Gotame shall be released on bail in his furnishing PR Bond of Rs. 25,000/- with surety in the like amount.

7. Application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane