



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

CRIMINAL APPLICATION [APPA] NO. 626 OF 2024
IN CRIMINAL APPEAL NO. 349 OF 2024.

Prashant @ Pappu Gurudas Tumdam. Applicant/Appellant.

Versus

The State of Maharashtra. Respondent.

Shri R.M.Daga, Advocate for the Applicant/Appellant.
Shri A.B. Badar, A.P.P. for the Respondent/State.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
VINAY JOSHI, JJ.

DATE : NOVEMBER 13, 2024.

This is an application of the convicted accused in terms of Section 389 of the Code of Criminal Procedure seeking suspension of execution of sentence in Sessions Case No.194/2019 passed by the Additional Sessions Judge, Wardha vide judgment and order dated 20.04.2024, and for grant of bail. By this judgment, the applicant/accused was tried and convicted for the offence punishable under Section 302 of the Indian Penal Code.

2. The learned Counsel appearing for the applicant would submit that the learned trial Judge erred in appreciating the evidence of the eye witnesses, which resulted into recording a finding of guilt in absence of credible evidence. It is submitted that the evidence of eye witnesses is totally unreliable and unacceptable. The applicant is in jail from last 5 years. There are bright chances of acquittal, and therefore, he urged for suspension of sentence and grant of bail.

3. On the other hand, the learned A.P.P. resisted this application by contending that the impugned judgment and order is well reasoned. It is submitted that the two eye witnesses have categorically stated above the specific role of the applicant in committing the crime. It is further submitted that the clear evidence of the eye witnesses points toward the guilt of the applicant, and thus, it is not a fit case to release the applicant on bail.

4. We have heard the learned Counsel appearing for both sides and with their assistance gone through the record and proceedings. At the instance of a report lodged by mother of the deceased, the crime has been registered. Precisely it is the prosecution case that on 27.08.2019 around 4 p.m. she learnt from the neighbouring resident that her son

Rajesh [deceased] has been assaulted. She rushed to the spot, and saw that her son was lying dead in a pool of blood. She expressed suspicion against the accused since in the past, the accused had threatened her son, as well as she learnt the name of accused from the people gathered in the vicinity. Though the prosecution has examined several witnesses, most of them left loyalty to the prosecution by turning hostile. The prosecution mainly relied on the evidence of P.W.4 Kiran Atram and P.W.5 Radhabai Dagwar.

5. The learned Counsel for the applicant would submit that the evidence of P.W 4 Kiran would not be helpful since she did not state about the actual occurrence. Moreover, she admits that she has not seen the applicant while assaulting the deceased. It is argued that P.W.5 Radhabai, though stated about the occurrence, however, her evidence is shattered by the admissions given in the cross examination. For this purpose, he took us through the cross-examination wherein she admitted that soon after the occurrence, she disclosed to the police that she has not witnessed the incident. Moreover, she admits that she is giving evidence on the basis of information gathered from the people.

6. The learned Counsel for the applicant would submit that

though a knife, allegedly used in the commission of the crime was seized, however, no blood was detected on the said knife.

7. In view of above, certainly an arguable case has been made out. In case of success in appeal, the position would become irreversible. The appeal will take its own time for disposal. The appellant is in jail since last 5 years. In view of above, we deem it fit to exercise our judicial discretion and pass the following order.

ORDER

- (i) Criminal Application is accordingly allowed and disposal of.
- (ii) The execution of the substantive sentence passed in Sessions Case No.194/2019 by the Additional Sessions Judge, Wardha vide judgment and order dated 20.04.2024, stands suspended till the disposal of this appeal.
- (iii) The appellant/accused – Prashant @ Pappu Gurudas Tumdam shall be released on bail on his furnishing solvent surety of Rs.50,000/- (Rs. Fifty Thousand only) with one surety in the like amount.
- (iv) The appellant/accused shall attend the concerned Police Station on every 1st Monday of every month in between 10 a.m. to 12 noon, till disposal of this appeal.

(VINAY JOSHI, J)

(CHIEF JUSTICE)