



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

CRIMINAL APPLICATION (APPA) NO.1110 OF 2023
IN
CRIMINAL APPEAL NO.678 OF 2023

(Dhajraj s/o Narayanrao Kawale Vs. State of Maharashtra thr. PSO PS Sewagram,
Tah. & Dist. Wardha)

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

Court's or Judge's orders.

Mr. Mahesh Rai, Advocate for Applicant.
Mr. H. D. Futane, APP for Non-Applicant/State.

CORAM: M. W. CHANDWANI, J.

DATE: 22nd JANUARY, 2024.

The applicant seeks suspension of substantive sentence imposed by impugned order dated 03.08.2023 in Sessions Case No.103/2016.

2. The applicant has been convicted for offence punishable under Section 307 of IPC and is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.6000/- in default to suffer simple imprisonment for six months.

3. It is contended by the learned counsel for the applicant that the applicant has been falsely implicated in this case and the trial court has not appreciated the evidence in its proper perspective. According to complainant, he sustained two injuries whereas the Doctor deposed that one

injury was on the neck. He submits that it is not case of 307 of IPC as there was no intention of the applicant to kill the injured. He submits that the eye witness admitted in cross-examination that he has not seen the incident. According to the learned counsel, the appeal will take considerable time, therefore, the substantive sentence be suspended pending the appeal.

4. Per contra, the learned APP objected the application on the ground that the assault was made by the applicant on the neck of the victim twice which itself goes to show the intention of the applicant. Therefore, according to him, the Court has rightly convicted the applicant for offence punishable under Section 307 of IPC. According to him, there is no ground available with the applicant which could help him in succeeding the appeal. Therefore, the application may be rejected.

5. The applicant has been sentenced for fixed term of five years. No doubt the injured has deposed about the alleged two injuries by knife, however, evidence of Doctor reveals that the injured was having only one injury. The eye witness projected by the prosecution has deposed in his cross-examination that he has not seen any incident. An arguable case is made out. The sentence is for fixed term of five years, the applicant is in jail since 03.08.2023 from the date of judgment. The position will not be reversible in case the appellant succeeds in appeal. In these facts and circumstances of the case, a case is made out for suspension

of sentence. Hence, this order.

5. The application is allowed. Pending the appeal and the substantive sentence in Sessions Case No.103/2016 shall remain suspended.

6. The applicant shall be released on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

7. The applicant shall deposit amount of fine before the trial court on or before the date of furnishing surety.

8. The applicant shall appear before this Court on the date of final hearing of appeal.

9. The application is allowed and disposed of.

JUDGE

NSN