



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

Criminal Application [APPA] No.911 of 2024

in

Criminal Appeal No.528 of 2024

*Sheikh Jamir Sheikh Jalil Kureshi*

*vs.*

*State of Maharashtra, through P.s.O. City Police Station, Chandrapur.*

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*Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.*

*Court's or Judge's Orders*  
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*Mr. Arjun Bobde assisted by Ms. Juhita Hirekhan, Advocate for the  
Applicant/Appellant.*

*Mr. M.K. Pathan, A.P.P. for the Non-Applicant/Respondent.*

CORAM : SMT. M.S. JAWALKAR AND  
M.W. CHANDWANI, JJ.  
RESERVED ON : 28<sup>th</sup> NOVEMBER, 2024.  
PRONOUNCED ON : 6<sup>h</sup> DECEMBER, 2024.

The applicant-appellant has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for one month.

02. Mr. Arjun Bobde, learned Counsel appearing on behalf of the appellant submits that two witnesses viz. Komal Balwant Moon (PW-1) and Khushabu Suraj Chaudhari (PW-5) are the sisters of deceased-Akshay and therefore, they are interested witnesses. According to him, the version of Yogesh Mahesade (PW-2) goes to show that the present applicant did not participate in the quarrel. According to him, even if the version of Komal Balwant Moon (PW-1) and Khushabu Suraj Chaudhari (PW-5) are believed, it would show that the fatal assault by means of knife has not been attributed to the present appellant. In fact, there is

nothing on record to suggest that the appellant had common intention with the main accused. According to him, the appellant has a good chance to succeed in the appeal. He submits that the appellant is in jail since 2020 and the appeal may not come up for hearing for a considerable time, therefore, substantive sentence be suspended and the appellant be released on bail pending the appeal.

03. *Per contra*, the learned A.P.P. for the State submits that there is material on record which suggests that the appellant in pursuant to common intention, overacted and participated in the crime. Rather, the appellant assaulted the deceased by fist and kick blows. He further submits that the findings of the trial Court holding the appellant guilty for the offence punishable under Section 302 of the Indian Penal Code cannot be faulted with and therefore, seeks rejection of the application.

04. Having heard the learned Counsel for the respective parties, we have gone through the depositions as well as the impugned judgment. It appears from the impugned judgment as well as the depositions that the appellant, along with many accused had been to the house of the deceased. Since the deceased was not in the house, they left the house threatening to his sister Khushabu to kill her brother- Akshay. The incident occurred around 02:00 pm to 02:30 pm at Nehru Chowk and the sisters of the deceased i.e. Komal Balwant Moon (PW-1) and Khushabu Suraj Chaudhari (PW-5) have deposed that they saw the incident. The main accused was stabbing the deceased with knife, whereas the applicant and other co-accused Rajan were assaulting the deceased by fist and kick blows. Yogesh Mahesade (PW-2), who is also one of the eye-witnesses, deposed that he saw the physical altercation between deceased- Akshay Moon, Sajan Dongre and Rajan Dongre, whereas the appellant was standing at a little distance.

05. What we find from the material available on record is that, the appellant was not holding any weapon; rather, the version of Yogesh Mahesade (PW-2) reveals that he was standing a little away from the place of incident. An arguable point is made out whether the appellant has shared common intention with the other accused to kill the deceased which has to be determined at the time of final hearing of the appeal. The appellant is incarcerated since 2020. In case the appellant succeeds in the appeal, the position will be irreversible. Considering this aspect, we are of the opinion that a case is made out for exercising the discretion for suspending the sentence pending the appeal. Hence, this order.

### **ORDER**

- I. Pending the appeal, substantive sentence passed by the learned Additional Sessions Judge in Sessions Case No.16/2020 vide judgment and order dated 21/03/2024 against appellant-Sheikh Jamir Sheikh Jalil shall remain suspended.
- II. Meanwhile, appellant-Sheikh Jamir Sheikh Jalil shall be released on bail on his furnishing a P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the like amount before the trial Court.
- III. The application is allowed and disposed of accordingly. No costs.

(M.W. Chandwani, J.)

(Smt. M.S. Jawalkar, J.)