



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

CRIMINAL APPLICATION (APPA) NO. 920 OF 2024
IN
CRIMINAL APPEAL NO. 539 OF 2024

AVINASH MOTILAL SANGOLE (IN JAIL)

...Vs...

THE STATE OF MAHARASHTRA THR. P.S.O., P.S. PARSHEONI, NAGPUR

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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Shri Arjun Bobde, Advocate with Ms. Shubhangi Jadhao, Advocate and Ms. Juhita Hirekhan, Advocate h/f. Shri Shubham Shukla, Advocate for appellant.
Shri M.K. Pathan, APP for respondent/State.

CORAM: SMT. M.S.JAWALKAR AND
M.W. CHANDWANI,, JJ.

RESERVED ON : 28th NOVEMBER, 2024.
PRONOUNCED ON: 05th DECEMBER, 2024.

The present application is filed for suspension of sentence and grant of bail.

2. The case of the prosecution is that, on 1/9/2019, Mr. Shubham Palewar who was employed on the land of Bandu Meshram was sitting beneath a tamarind tree located near a water tank on Bandu Meshram's property. He was engaged in gambling along with Suraj Meshram and other residents. At around 3:30 - 4:00 P.M., the Accused No.1/Appellant was seen in the vicinity of the gambling group. Subsequently, he approached Suraj Meshram from

behind and allegedly shot him with a gun, thereby injuring Suraj Meshram's head, which resulted in his immediate death.

3. When Shubham Palewar went near Suraj Meshram, the Accused no.1/Appellant allegedly kept gun on his head and asked him to flee from the spot. Driven by fear, he immediately vacated the scene of incident. While leaving, he heard distinct sounds of two gunshots. Also, while leaving, he observed the appellant was proceeding towards the field owned by Bandu Meshram.

4. On 2/9/2019, the FIR bearing Crime No. 310/2019 was lodged at Police Station Parsheoni, Nagpur against the accused and the Accused was arrested by the police officials of Parsheoni Police Station. After investigation, the Charges were framed against the accused accordingly, the Hon'ble Additional Sessions Judge pronounced the judgment and convicted the Accused/Appellant u/s. 302 I.P.C. to suffer imprisonment for life. Hence the application for suspension of sentence.

5. It is the contention of the learned counsel for the appellant that, the learned Trial Court erred in appreciating the fact that the deceased had purchased 65R of land from the father of the Accused No. 1/Appellant herein. However, the deceased

subsequently encroached the property belonging to the Accused No.1/Appellant, thereby taking into possession the land, exceeding the area which was originally sold. It is further submitted that, the deceased had a history of deliberately picking up fights with the Accused No.1/Appellant herein, and despite encroaching upon the Appellant's land, the deceased continued to harbour grudges against him. Whatever it may be, nobody has right to take law in his hand.

6. The learned counsel for the applicant/accused pointed out that, the presence of the shubham on the spot is not stated by any of the witness and the person from whose house, the fire arms are recovered are not arrayed as accused. The learned Trial Court has failed to take into consideration the several significant factors that are essential for the practical implementation of the rule of prudence and action. Moreover the learned Trial Court has missed the important details that could have affected the prudence and caution required in handling the present case. Hence prayed for the interference by this court and suspension of sentence.

7. Shri Arjun Bobde, learned counsel appearing for the appellant relied on the following citations:-

1) Balwinder Singh alias Dalbir Singh V/s. State of Punjab [(1987) 1 SCC 1].

2) Kashmira Singh V/s. The State of Punjab [1977) 4 SCC 291].

8. Learned APP for the state supported the judgment passed by the learned trial court and prayed for the confirmation of the same.

9. We have heard learned counsel for the respective parties.

10. It is the case of direct evidence. The witness Shubham Harichandji Palewar (P.W. 6) is the eye witness of the incident. He has specifically deposed that, when he along with other local members including Suraj Meshram were gambling in the field of Bandu Meshram near the water tank below the tamarind tree, at that time, Avinash (accused no. 1) who was roaming around them went behind Suraj Meshram and fired a gun shot in the head of Suraj Meshram and said Suraj Meshram died on the spot.

11. It was duly observed by the learned Trial Court from suggestions put forth to the witnesses in cross-examination, which support what Shubham Palewar has deposed. That witnesses along with Suraj Meshram and other persons were gambling.

12. Another ground is that, the ballistic expert is not examined. In our considered opinion, when there is an eye witness to the incident, the Court can rely upon the opinion of the expert, his examination is not necessary. If at all, the accused is having any doubt about the expert opinion, he would have called the expert as a witness. Thus, at present, this ground *prima facie* no ground to suspend the sentence. Thirdly, it is the contention of the learned counsel for the appellant/accused that, the person from whose house, the fire arm is recovered is not arrayed as an accused in the present case. However, in our considered opinion, it is recovery under Section 27 of the Indian Evidence Act and discovery of the weapon was at the instance of the accused from the place where he had conceived. Therefore, *prima facie*, this objection cannot sustain in the eyes of law.

13. The learned counsel for the appellant relied on ***Balwinder Singh*** (supra), however, it is not applicable in the present set of facts as it was the case of circumstantial evidence purely.

14. The learned counsel for the appellant also relied on ***Kashmira Singh*** (supra) wherein the Hon'ble Apex Court held as under:-

“No practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it

operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in the Supreme Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period.
(Para 2)

The rationale of the above practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. (Para 2)

Therefore so long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence. The very fact that the Supreme Court has granted to the appellant special leave to appeal against his conviction shows that, in the opinion of this Court, he has prima facie a good case to consider and in the circumstances it would be highly unjust to detain him in jail any longer

during the hearing of the appeal. (Paras 2 and 3)

Application allowed.”

15. In our considered opinion, it is true that when the High Court is not in a position to dispose of the appeal for five or six years, in that case, releasing of accused on bail can be considered. In the said matter before the Hon’ble Apex Court i.e. ***Kashmira Singh*** (supra), the Sessions Court convicted the accused for an offence punishable under Section 323 of the Indian Penal Code and sentenced to suffer six months’ rigorous imprisonment and he was acquitted from committing an offence punishable under Section 302 of I.P.C. and hence, the State preferred an appeal against the order of acquittal to the High Court. In State appeal, the High Court set aside the order of acquittal and convicted the appellant for an offence punishable under Section 302 of I.P.C. and sentenced him to suffer imprisonment for life. Therefore, there was a strong case for consideration of releasing the accused on bail. In the present matter, the accused fired a gun shot to the deceased head from the back side and P.W. 6 is the eye witness of the said incidence. The ballistic report and medical evidence support the deposition of P.W. 6.

16. In view of these facts, no case is made out for suspension of sentence and as such, the application

for suspension of sentence and grant of bail is **rejected**.

17. So far as the apprehension of delay is concerned, it can be taken care of by directing the office to prepare paper book within a period of 8 weeks and place the matter for final hearing on 30/01/2025.

18. Accordingly, the application is **disposed of**.

CRIMINAL APPEAL NO. 539 OF 2024

19. Office to prepare paper book within a period of 8 weeks and place the matter for final hearing on 30/01/2025.

(M.W. CHANDWANI, J.)

(SMT. M.S.JAWALKAR, J.)