



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

CRIMINAL APPLICATION (APPA) NO.934/2024

IN

CRIMINAL APPEAL NO.78/2024

(Gajanan S/o Babanrao Mohad 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

Ms. F.N. Haidari, Advocate for the applicant.

Ms. M.H. Deshmukh, A.P.P. for the non-applicant/State.

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

DATED: 30.9.2024.

Heard.

2. This is an application seeking suspension of execution of sentence passed in Sessions Case No.383/2019 whereby the applicant along with two others have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code sentencing to suffer imprisonment for life.

3. Learned Advocate appearing for the applicant claims suspension on the ground of parity as well as merits too. We have been taken through paras 6 to 8 of our order dated 9.5.2024 in Criminal Application (APPA) No.146/2024 in which while considering the material against co-accused we have made certain observations. It is submitted that incriminating material against co-accused Vijay and Raju, who are released, is exactly similar to the applicant Gajanan except the distinguishing feature that an axe has been recovered at his instance. In this regard, it is argued that though axe has been recovered at the instance of applicant Gajanan, however, it is argued that it does not have blood stains and thus it cannot be connected with a crime. Learned A.P.P. conceded

the position that this is the only distinguishing feature which stands against the applicant Gajanan.

4. While considering the suspension of co-accused Vijay and Raju we have already evaluated the material on which concluded that a case of suspension has been made out. As regards the seizure of an axe at the instance of applicant is concerned, there are no bold stains. The seizure of a weapon cannot be termed as an incriminating circumstance unless the prosecution establishes it's link with the crime. In the circumstances, for the reasons recorded while suspending the sentence of other accused, we are inclined to exercise our judicial discretion for suspending the execution of sentence of applicant Gajanan.

5. In view of above, the application is allowed.

6. The execution of substantive sentence passed against accused Gajanan stands suspended till the final disposal of the appeal.

7. In the meantime, the applicant shall furnish PR bond of Rs.50,000/- with surety of like amount.

8. The trial Court shall issue release warrant after ensuring deposit of entire fine amount.

9. The application stands disposed of in the above terms.

(MRS.VRUSHALI V.JOSHI, J.)

(VINAY JOSHI, J.)