



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

CRIMINAL APPLICATION (APPA) NO. 1157/2024

IN

CRIMINAL APPEAL NO. 580/2022

Chetan S/o Munna Mahato and another

Vs.

State of Maharashtra through PSO, PS Ambazari, District Nagpur

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for applicant/appellant
Mr. A.M. Ghogre, APP for respondent/State

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

DATED : 06/12/2024

Heard.

2. This is an application seeking suspension of execution of sentence passed in Sessions Trial No.60/2021 by District Judge, Nagpur on 09/06/2022, whereby the applicant – Chetan Munna Mahato was convicted and sentenced to suffer imprisonment for life and fine of Rs.5,000/- and in default to suffer further imprisonment of six months for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC), so also rigorous imprisonment for ten years along with fine of Rs.3,000/- and in default to suffer further imprisonment of three months for the offence punishable under Section 449 read with Section 34 of the IPC and rigorous imprisonment for one year and fine of Rs.1,000/- and in default to suffer further imprisonment of one month for the offence punishable under Section 323 read with Section 34 of the

IPC. Pending the appeal, the Application for suspension of sentence has been filed.

3. Mr. R.M. Daga, learned Counsel appearing on behalf of applicant/appellant vehemently submits that though there are eye witnesses who have deposed about the participation of appellant in the crime, but the appellant was not holding any weapon in his hand. The incident took place in the spur of moment. The role assigned to present applicant is holding the deceased, whereas, the other main co-accused Chunni gave knife blow on the chest, abdomen and hand of the deceased. According to him, considering the manner in which the incidence occurred, the intention of the appellant cannot be inferred. The other co-accused having similar role have already been released on bail by this Court vide order dated 19/10/2023. Therefore, the sentence of the present applicant/appellant be also suspended.

4. Conversely, the learned APP for the State objected the application on the ground that the appellant overacted at the time of commission of offence. That apart, the blood stains are found on the clothes of the applicant which is not the case of the co-accused. Therefore, the appellant cannot claim parity. According to him, the learned Trial Court after considering the role played by the applicant has convicted the accused, therefore, he sought the rejection of the application.

5. We have gone through the impugned judgment and deposition of the witnesses. It transpires that on the day of incidence, the appellant/applicant along with other

co-accused barged into the house of the informant. The co-accused Ramu and Munna are brother and father of the appellant/applicant. They abused the informant's nephew, Ritesh. The deceased has intervened. At that relevant time, the co-accused Ramu @ Chunni took out knife and inflicted repeated blows on deceased Ashok, who succumbed to the chest injuries, relying on the version of eye witnesses PW 1 – Dinesh, PW 3 – Ritesh and PW 5 - Nikita, who deposed about the happening of the incidence. Whereupon, the learned Trial Court recorded the conviction.

6. Perusal of record goes to show that role assigned to the applicant is of holding the deceased Ashok, whereas, the fatal blow of knife is assigned to Ramu @ Chunni. So far as submission of learned APP for the State that the blood stained clothes of the appellants were recovered is concerned, our attention has been drawn by the Counsel for the applicant to the fact that the clothes of appellant has not been recovered at the instance of this very appellant, but at the instance of other co-accused Ramu.

7. Whether the appellant shared the common intention needs to be considered in the background of the evidence stated by the informant and other witnesses. Thus, there is arguable point which will have to be considered at the time of final hearing of the appeal. The old appeals are pending. The appeal may not be heard in near future and may take its own time for disposal in accordance with law. In view of the role played by the applicant and nature and material collected against the

applicant, we are of the opinion that the case is made out for suspension of sentence. Hence, this order :

ORDER

- i) Criminal Application is allowed and disposed of.
- ii) Pending the appeal, substantive sentence, passed in Sessions Case No. 60/2021 by District Judge – 1 and Additional Sessions Judge, Nagpur on 09/06/2022 for the offence punishable under Sections 302, 449 and 323 read with Section 34 of the IPC, as regards applicant – Chetan S/o Munna Mahato, shall remained suspended.
- iii) In the meanwhile, the applicant - Chetan S/o Munna Mahato, shall be released on bail on his furnishing P.R. bond of Rs.25,000/- with one solvent surety in the like amount.

(M.W. CHANDWANI, J.)

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

Jayashree....