



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION NO.14 OF 2024 IN
CRIMINAL APPEAL NO.5 OF 2024

Nilesh Arjunrao Badwaik (In Jail)

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri S.D. Umredkar, Advocate for the applicant.
Shri Chutke, Addl.P.P. for the State.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 25/04/2024.

Heard.

2. This is an application seeking for suspension of execution of sentence passed in Sessions Case No.171 of 2018 vide judgment and order dated 31.10.2023. The learned Trial Court has convicted the applicant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life.

3. The prosecution case is entirely based on circumstantial evidence. The circumstances relied by the Trial Court for basing conviction are namely motive, last seen circumstances, recovery of dead body from the spot, seizure of blood stained clothes from the person of the accused, recovery of weapon at the instance of the accused, medical evidence, Forensic evidence and failure to give explanation.

4. Learned Counsel for the applicant took us through the evidence of Medical officer to show that the deceased sustained three deep stab injuries with one

lacerated wound. The stick was allegedly seized at the instance of the applicant. It is submitted that the stab injuries were found on the person of the deceased are not possible by the stick. Secondly, it is argued that after two days from the incident, blood stained clothes were seized from the person of the applicant, which is improbable. Though there is a last seen evidence, it is argued that on earlier night, both were seen at public place near the liquor shop and thus, on the basis of mere last seen theory, conviction cannot be based. The arguable case has been made out. In case of reversal of conviction, the position would become irreversible. Looking to above circumstances, a case of suspension has been made out. Hence the following order :

- (a) The application is allowed.
- (b) Execution of substantive sentence passed in Sessions case No.171 of 2018 has been suspended till the final disposal of the appeal.
- (c) In the meantime, the applicant Nilesh Arjunrao Badwaik shall be released on bail on his furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.
- (d) The Trial Court shall issue release warrant only after ensuring that entire find amount has been deposited.

5. The application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)