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

CRIMINAL APPLICATION (APPA) NO. 288 OF 2024
IN
CRIMINAL APPEAL NO.152 OF 2024

Sagar Gajananrao Kharad and one anr. -Vs-State of Maharashtra

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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.

Mr.R.M.Daga counsel for the applicant.
Mr.Nikhil Joshi, A.P.P for non-applicant-State.

CORAM : VINAY JOSHI &
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 18th APRIL, 2024.

1. Heard.

2. This is an application seeking suspension of execution of sentence of applicant Sagar Gajananrao Kharad (accused No.1), who has been convicted in Sessions Case No.164 of 2020 by judgment and order dated 31.01.2024.

3. It is the prosecution case that there was oral altercation between deceased Pankaj at one side with applicant Sagar and Dhiraj on the road. In proximity, applicant Sagar caught hold of Pankaj, whilst co-accused Dhiraj gave a single blow at the thigh of the deceased, which proved to be fatal.

4. The learned counsel appearing for the applicant would submit that accused Sagar has been convicted with the aid of Section 34 of the Indian Penal

Code. It is his submission that the incident was at the spur-of-the-moment and thus the common intention may not be derived as that could be a reaction in the quarrel. Moreover, it is submitted that a single blow that too on non vital part i.e. at thigh has been inflicted and thus the conviction as rendered under Section 302 of the Indian Penal Code is not sustainable. Particularly, it is argued that even if, it is a case of homicidal death, still the role of applicant Sagar was not of actually inflecting a vital role.

5. During the trial, the applicant was on bail. An arguable case has been made out to the extent of applicant Sagar. Considering all above facts, a case of suspension has been made out. In view of that, the Criminal Application is allowed. Execution of substantive sentence passed against the applicant No.1 Sagar Gajananrao Kharad in Sessions Case No.164 of 2020 stand suspended till disposal of the appeal.

6. In the meantime, applicant Sagar shall furnish PR bond of Rs.50,000/-(Rupees fifty thousand only) with one solvent surety of like amount.

7. Bail before the Lower Court.

8. Application stands disposed of accordingly.

JUDGE JUDGE

Signed by: Kavita P Tayade
Designation: PA To Honourable Judge
Date: 22/04/2024 10:53:38