



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

CRIMINAL APPLICATION (APPA) NO. 295/2024

IN
CRIMINAL APPEAL NO. 153/2024

Rohit Manohar Hemnani @ Bholani

...VERSUS...

State of Maharashtra

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

Court's or Judge's orders

Shri S.A. Sahu, Advocate for the Appellant(s)
Shri S.S. Doifode, APP for the Respondent/State

CORAM :- M.S. JAWALKAR & M.W. CHANDWANI, JJ.
DECEMBER 20, 2024

(1) The present Application is filed by the Applicant/Appellant for suspension of sentence and grant of bail.

(2) The Applicant/Appellant was prosecuted for the offences punishable under Section 302 of the Indian Penal Code, 1860, Section 4/25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951. After the trial, the Appellant – Accused has been sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/-. He was acquitted from having committed the other offences Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act.

(3) Learned Counsel for the Appellant drawn our attention to the depositions of the concerned doctors. From these depositions, it appears that P.W. 9 - Dr. Nelson N. Kumar, who has conducted the post-mortem, has admitted in his cross-examination that the patient was not died due to result of direct stab wounds. P.W. 10 – Dr. Ninad Bhaiyyasaheb Gawande admitted in his cross-examination that he was not Surgeon and Physician. He was the treating doctor of the said patient and one Dr. Tomey was the General Surgeon. He has further admitted in his cross-examination that the patient was conscious, but she had not disclosed the name of person and description of weapon. He also admitted that the Injuries B-1 to 5 are simple and were on non vital part. He further admitted that the Injury A-1 was the only grievous injury. He also admitted that as per the Exhibit 56, the size and description of Injury A-1 are not matching with the weapon Article – A. He further admitted that if infection septic, septicaemia would not have developed, the patient might have survived. It is an admitted fact that after the surgery, the patient survived for 80 days.

(4) Learned Counsel for the Appellant relied on the judgment of the Hon'ble Supreme Court in the case of **Shanmugan Alias Kulandaivelu vs. State of T.N. reported in (2002) 10 SCC 4 and the**

judgment of this Court in the case of Tukaram Dhondirao Sonawane vs. State of Maharashtra reported in 2006 STPL 17369 Bombay, wherein the Hon'ble Supreme Court as well as this Court held that considering the nature of injuries and the medical opinion which unmistakably point to the fact that the bodily injuries inflicted on the Deceased were of such nature that they were likely to cause death but without intention to cause death, and as such, convicted the Accused under Section 304 Part II by modifying conviction under Section 302.

(5) Though the learned APP opposed the Application, in view of the medical opinion, we are of the considered opinion that arguable point is made out. The Applicant is entitled for suspension of substantive sentence during the pendency of Appeal. Moreover, the Accused is in jail since more than seven years and there is less chance for listing of the matter for final hearing in the near future.

(6) Hence, we proceed to pass following order:-

ORDER

(a) The Application is **allowed**.

(b) The substantive sentence in respect of the Applicant/Accused – Rohit S/o Manohar Hemnani @ Bholani in Sessions Trial No. 393/2018 is hereby suspended during the pendency of present Appeal.

(c) The learned Ad-hoc District Judge-5 and Additional Sessions Judge, Nagpur shall release the Applicant on bail on furnishing P.R. Bond of Rs. 30,000/- and one solvent surety in the like amount.

The Application stands **disposed of** in the above terms.

(M.W. CHANDWANI, J.)

(M.S. JAWALKAR, J.)