



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

CRIMINAL APPLICATION (APPA) NO. 301 OF 2024

IN

CRIMINAL APPEAL NO. 156 OF 2024

Akash S/o. Pandurang Mankar

Vs.

State of Maharashtra

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

Court's or Judge's Order

Shri M. V. Rai, Advocate for applicant.
Shri Harshal D. Dubey, APP for non-applicant/State.

CORAM :- M. W. CHANDWANI, J.

DATED :- 05.04.2024

Heard.

2. By the present application, the applicant seeks suspension of substantive sentence passed by the learned Additional Sessions Judge, Wardha vide judgment and order dated 02.03.2024 in Sessions Case No. 81/2020. The applicant is convicted for the offence punishable under Section 307 of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment for five years and to pay fine of ₹3,000/-.

3. It is the contention of the learned counsel for the applicant that no case is made out for the offence punishable under Section 307 of the IPC, as there was no intention of the applicant to kill the complainant. The weapon used in the crime is a stick whereas, the

complainant came up with a case of assault by an axe. He submitted that the Trial Court did not consider this aspect while convicting the applicant for the offence punishable under Section 307 of the IPC. According to him, the applicant has a good case on merit and hence, seek suspension of substantive sentence awarded to the applicant.

4. *Per contra*, the learned APP for the State supported the judgment and order of the Trial Court and submitted that there was injury on the head of the complainant. He further submits that there is no merit in the appeal of the applicant therefore, objected the application for suspension of substantive sentence.

5. Perusal of the record goes to show that though the complainant came up with the case of assault on his head by an axe but, the fact remains is that weapon used in the crime is a wooden stick, which is palpable from the version of the Medical Officer (PW9) and the Investigating Officer (PW17). Even the record shows that a wooden stick is seized in the crime.

6. Considering the submissions, an arguable case is made out for scrutinizing the evidence of the prosecution's witnesses on merit as to whether the case falls under Section 307 of the IPC or not. That apart, the conviction of the applicant is for a fixed term of five years and the hearing of the appeal will take considerable time. The applicant was on bail during the trial and he did not

misuse the liberty granted to him. In case, the applicant succeed in showing that the offence under Section 307 of the IPC is not made out, the position will not be reversible as far as incarceration of the applicant is concerned. Therefore, a case is made out for suspension of substantive sentence. Hence, I proceed to pass the following order:-

- i) The application is allowed.
- ii) During pendency of the appeal, the substantive sentence passed by the learned Additional Sessions Judge, Wardha vide judgment and order dated 02.03.2024 in Sessions Case No. 81/2020 shall remain suspended.
- iii) The applicant be released on bail on he executing a PR bond of ₹25,000/- (Rs. Twenty Five Thousand) with one solvent surety in the like amount.
- iv) The applicant shall remain present before this Court at the time of final hearing of the appeal.

The Registry is directed to process the appeal as per rule and the appeal be listed before the Court as per its turn.

(M. W. CHANDWANI, J.)