



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

CRIMINAL APPLICATION (APPA) NO. 343 OF 2024

IN

CRIMINAL APPEAL NO. 186 OF 2024

Hanaslal S/o. Gopichand Nagpure and another

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 R. K. Tiwari, Advocate for applicants.
Shri Harshal D. Dubey, APP for non-applicant/State.

CORAM :- M. W. CHANDWANI, J.

DATED :- 08.05.2024

Heard.

2. The application seeks suspension of substantive sentence passed on 12.03.2024 by the learned Sessions Judge, Gondia in Sessions Case No. 223/2019, thereby convicting the applicants for the offence punishable under Section 307 of the Indian Penal Code (IPC) and sentenced them to suffer rigorous imprisonment for five years and to pay fine of ₹5,000/-.

3. Shri Tiwari, learned counsel for the applicants submits that the Trial Court did not appreciate the facts and evidence on record in proper perspective. The case is not covered under Section 307 of the IPC. The weapon used in the offence, is 'spade', which is used

from the blunt side. It is the victim, who came on spot and the accident occurred. Therefore, there is no question that the applicants intentionally attempted to murder the victim. The sentence awarded is for a fixed term of five years. The applicants have a good case on merit. Hence, prayed for suspension of sentence and grant of bail.

4. *Per contra*, the learned APP for the State objected the application on the ground that the alleged assault was made on the victim on his head and there were two injuries on his head, which clearly demonstrate that assault was made by the applicant no. 1 with intention to kill the victim. There are two eye-witnesses to the incident apart from the injured himself. There is no case on merit hence, sought rejection of the application.

5. Perusal of the record shows that the victim himself went to the spot and thereafter the incident occurred. It is also a matter of record that assault was made by the applicant no. 1 by means of spade, which was being used for the purpose of digging, and the applicant no. 2 by means of fist, kick and blows.

6. Considering the material on record, a case is made out to scrutinize the evidence of the prosecution witnesses at the time of hearing of the appeal to see whether the applicants were having requisite knowledge. The sentence awarded is for a fixed term of five years.

The appeal may not be heard in near future. The applicants were on bail during the trial. There is nothing on record to suggest that the applicants misused the liberty granted to them. In case, the applicants succeed in the appeal, the position will not be irreversible.

7. Considering these, a case is made out for suspension of substantive sentence during pendency of the appeal. Hence, the following order:-

- i) The application is allowed.
- ii) During pendency of the appeal, the substantive sentence passed on 12.03.2024 by the learned Sessions Judge, Gondia in Sessions Case No. 223/2019 shall remain suspended.
- iii) The applicants shall be released on executing a PR bond of ₹25,000/- (Rs. Twenty Five Thousand) each with one solvent surety in the like amount.
- iv) During the pendency of the appeal, the applicants shall not enter the disputed area of plot.
- v) The applicant shall remain present before the Court at the time of final hearing of the appeal.

Registry is directed to process the appeal as per rule and list the matter as per its turn.

(M. W. CHANDWANI, J.)