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

CRIMINAL APPLICATION (APPA) NO. 685 OF 2024
IN
CRIMINAL APPEAL NO. 387 OF 2024

Munnabhai @ Mohd. Mujammil Shaikh Abid Husen
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 Salim I. Khan a/w. Ms. Rajeshree R. Evnate, Advocate for applicant.
Shri S. S. Doifode, APP for non-applicant/State.

CORAM :- SMT. M. S. JAWALKAR &
M. W. CHANDWANI, JJ.

DATED :- 18.12.2024

Heard.

2. The applicant is seeking suspension of substantive sentence imposed on 29.04.2024 by the learned Sessions Judge, Buldhana in Sessions Case No. 86/2022 thereby convicting him along with co-accused for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine of Rs.500/-.

3. Mr. Khan, learned counsel for the applicant submitted that no active role has been assigned to the present applicant. The fatal assault is attributed to co-accused- Hasmukh. The incident occurred all of a sudden on hurling abuses by the deceased. The role attributed by

the eye-witnesses to the present applicant is of assault on the deceased by fist and blows and the cause of death of the deceased is head injury. Hence, the learned counsel for the applicant seeks suspension of substantive sentence and grant of bail pending the appeal.

4. Mr. Doifode, learned APP for the State submitted that the applicant over reacted and assaulted the deceased by fist blows and even he has not taken any efforts to save the deceased at the time when the co-accused- Hasmukh assaulted the deceased by iron rod on his head. Therefore, there is common intention of the applicant along with co-accused- Hasmukh to kill the deceased. The judgment of the Trial Court is a well reasoned order showing the role played by the applicant hence, sought rejection of the application.

5. We have gone through the impugned judgment and order as well as the deposition of the witnesses, in particular the evidence of three eye-witnesses i.e. Sukhdeo Salokh (PW3), Deepak Pawar (PW4) as well as Sitaram Roy (PW7). Sukhdeo Salokh (PW3) and Deepak Pawar (PW4) has assigned role to the applicant of assaulting the deceased by fist blows whereas, Sitaram Roy (PW7) did not attribute any role to the applicant. It appears that the incident occurred on hurling of abuses by the deceased. Initially, the applicant and co-accused- Hasmukh assaulted the deceased by fist blows thereafter, co-accused- Hasmukh assaulted the deceased by iron rod on his head, which is the cause of death of the deceased.

6. The submission advanced by the learned counsel for the applicant cannot be brushed aside and required consideration to find out whether the applicant shared common intention with co-accused- Hasmukh. Considering the submissions and the fact that the incident occurred at the spur of the movement; role assigned to the present applicant; the material collected against him, we find that a case is made out for suspension of substantive sentence pending the appeal. Hence, we proceed to pass the following order:-

i) The application is allowed.

ii) Pending the appeal, the substantive sentence imposed upon the applicant on 29.04.2024 by the learned Sessions Judge, Buldhana in Sessions Case No. 86/2022 shall remain suspended.

iii) The applicant be released on executing a P. R. bond of Rs.30,000/-(Rs. Thirty Thousand) with one solvent surety in the like amount.

(M. W. CHANDWANI, J.) **(SMT. M. S. JAWALKAR, J.)**

Signed by: Mr. Rajnesh Jaiswal
Designation: PA To Honourable Judge
Date: 20/12/2024 17:14:15
RR Jaiswal