



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

CRIMINAL APPLICATION (APPA) NO. 791 OF 2024
IN
CRIMINAL APPEAL NO.152 OF 2024

Dhiraj @ Golu @ Kawa Thakare -Vs-The 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.

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

CORAM VINAY JOSHI &
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 2nd SEPTEMBER,2024

1. Heard.
2. This is an application filed by the applicant (accused No.2) Dhiraj @ Golu @ Kawa Thakare seeking suspension of execution of sentence. Applicant Dhiraj @ Golu @ Kawa Thakare along with co-accused Sagar Gajananrao Kharad have been tried and convicted for the offence punishable under Sections 302 and 506 r/w 34 of the Indian Penal Code in Sessions Case No.164 of 2020 vide judgment and order dated 31.01.2024 passed by the Sessions Judge, Amravati.
3. The learned counsel appearing for the applicant would submit that the evidence before the trial court is not trustworthy however, the trial court erred in convicting both of the accused persons for the aforesaid

offences. The trial court has not considered material inconsistencies, which resulted into recording un-meritorious conviction.

4. It is the case of the prosecution that co-accused Sagar and applicant Dhiraj have assaulted deceased Pankaj in furtherance of their common intention by means of knife on 31.07.2020 to which the injured succumbed on the following day. The prosecution case is based on three eye witnesses i.e. PW-1 informant Pallavi, PW-3-Sumitra and PW-4- Vandana. The learned counsel appearing for the applicant would submit that the statement of PW-3 and 4 has been recorded by the police after 10 days, which is not free from suspicion. It is submitted that PW-1 Pallavi though stated the role of the applicant, however, she admits in the cross-examination that she did not disclose the name of the applicant. On careful examination, *prima facie*, we see no substance in the latter contention since Pallavi has disclosed the identity of the applicant by referring his nick name along with surname Thakare. The applicant took us through the cross-examination of informant, wherein it has come that at the place of incident knife was lying. The said portion was shown so as to discredit recovery under Section 27 of the knife in pursuant to the information given by Dhiraj.

5. Apart, the applicant's learned counsel strenuously argued that this is not a case falling under Section 300 of the Indian Penal Code. He would submit that it is the case of the single knife injury that too at the

thigh and thus by any stretch of imagination requisite intention and knowledge to cause death cannot be inferred. Undisputedly, as per prosecution case itself, applicant has inflicted a single blow at the thigh of the deceased. We have been taken through the medical evidence, wherein both doctor stated that life of deceased could have been saved on immediate treatment. There is considerable force in the submission that the offence of murder may not attract. Thus, an arguable case has been made out to that extent.

6. The applicant Dhirahj is in jail from 01.08.2020 i.e. for the period of four years. Since, a likelihood of attracting the offence of 304 part II of the Indian Penal Code emerges. We have considered the application on the said parameter. The appeal will take its own time for disposal. Having regard to above peculiar facts, we are inclined to exercise our judicial discretion.

7. The criminal application is allowed. Execution and implementation of substantive sentence passed in Sessions Case No.164 of 2020 vide judgment and order dated 31.01.2024 passed by the Sessions Judge, Amravati as against applicant Dhiraj stands suspended till final disposal of the appeal.

8. In the meantime, applicant Dhiraj @ Golu @ Kawa Thakare shall be released on bail on furnishing PR bond of Rs. 50,000/- (Rs.Fifty thousand only) with one

solvent surety in the like amount.

9. The applicant shall attend the concerned police station in between 10.00 a.m. to 12.00 noon of the first Monday of each month till the conclusion of the appeal.

10. Criminal application stands disposed of.

JUDGE

JUDGE