



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2551 OF 2025
IN
CRIMINALK APPEAL NO. 224 OF 2024

Prem @ Premkumar Rajendra Ayavale,
Age 24 years, Occ. Labour,
R/o. Indira Nagar, Osmanabad,
Dist. Osmanabad.

.. APPLICANT

VERSUS

1. The State of Maharashtra
2. Sukshala Ram Bandgar,
Age 42 years, Occ.Labour,
R/o. Wadar Galli,
Osmanabad.

.. RESPONDENTS.

Mr. D.S. Ingole, Advocate h/f. Mr. N.S. Ghanekar,
Mr. S.J. Salgare, APP for respondent No.1.
Ms. Saliba Kaur Neb for respondent No.2.

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

DATE : 10th SEPTEMBER, 2025.

ORAL ORDER :-

1. By this application, the applicant/accused is seeking suspension of his substantive sentence of imprisonment, during the pendency of appeal and his release on bail.
2. As per the prosecution case, the applicant alongwith his friend – Vishal Ram Bandgar, were present near Balaji Agro Agency on 5.4.2021 at about 6.10 P.M.. Their other friends were also there. At that time, the applicant was teasing the ladies passing from there. Vishal told the applicant not to tease those ladies. The applicant went backside and brought a knife and inflicted a blow on the chest of Vishal, who died

subsequently after giving statement to the police.

3. The learned counsel for the applicant submits that though there were three eye witnesses cited by the prosecution, but on going through the Dying Declaration, there is no reference in the same about presence of those eye witnesses. He further submits that it is a case of single blow and, therefore, the learned trial Judge ought not to have convicted the applicant for the offence punishable under Section 302 of IPC. He further submits that the incident had taken place at the spur of moment and on sudden provocation. He submits that hearing of the appeal will take some time and considering the circumstances in which the present offence has been committed, the applicant needs to be released on bail by suspending his sentence of imprisonment.

4. In support of his oral submission, he also relied on the judgment of the Bombay High Court in the matter of ***Lahu Chandar Hiram vs. State of Maharashtra, 2013 4 Mh.L.J. (Cri.) 214***, wherein, following observations are made :-

“9. To bring a case under Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the word 'fight' occurring in Exception 4 to Section 300 of IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for passion to cool down. In this case, the evidence shows that both the parties had worked themselves into a fury on account of verbal altercation going on between them. The appellant did not come to the spot armed with a weapon but he assaulted Chandar with an axe taken from the house. The evidence of PW1 Bapu shows that the axe used in the incident was found in the house of every adivasi person. Thus, it is seen that the appellant did not come to the spot armed with the axe with premeditation but he assaulted Chandar with the axe which was in the house. However, for the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation, it must be further shown that the offender has not taken any undue

advantage or acted in cruel or unusual manner. The facts of this case show that the appellant did not take any undue advantage or acted in a cruel or unusual manner. However, we are not prepared to accede to the submission of Mr. Sait that the case would fall u/s 304 part II of the Indian Penal Code. In our view, the case would fall u/s 304 part I of the Indian Penal Code because we are of the opinion that the appellant did not just have the knowledge that his act is likely to cause death, as contended by Mr. Sait but in fact, the appellant intended to cause death of Chandar. We say so, on the basis of the weapon used, the part of the body where the injury was inflicted, the force used while assaulting and the nature of the injury. The injury as seen from the evidence of PW5 Dr. Narvate are serious in nature. Looking to all these facts, we are of the considered opinion that the case cannot fall u/s 304 part II of the Indian Penal Code”.

5. Thus, he submits that there is a scope for scaling down the offence and, therefore, the applicant be released on bail.

6. Per contra, learned APP pointed that this is second application for suspension of sentence and for release on bail. However, earlier application was, in fact, not pressed by the applicant. He pointed out that though this is a case of single blow, but it covers under the category thirdly, in the definition of Murder under Section 300 of IPC. For that purpose, he relied on the judgment of the Apex Court in the matter of ***Virsa Singh vs. State of Punjab, AIR 1958 SC 465***, wherein, following observations are made :-

“9. This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly" would be unnecessary because the act would fall under the first part of the section, namely -"If the act by which the death is caused is done with the intention of causing death."In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender : "If it is done with the intention of causing bodily injury to any person. It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that

is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

10. *Once that is found, the enquiry shifts to the next clause :-
"and the bodily injury intended to be inflicted is sufficient
in the ordinary course of nature to cause death."*

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining -"and the bodily injury intended to be inflicted" is merely descriptive. All the means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference of deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

11. *In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no*

knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand."

7. Learned advocate for respondent No.2 – mother of deceased, supported the arguments advanced by learned APP.

8. Though the learned advocate for the applicant argued on the aspect, as to how the criminal act of applicant does not come within the purview of the definition of murder, but on going through the record, it prima facie appears that there is no provocation on the part of deceased and he had only told the applicant not to tease the ladies. At this stage, we would not like to make any comment as to under which Section the criminal act of the applicant would fall or would be covered. Prima facie, the act of applicant was performed with per-meditation since after being told not to tease the ladies, he went backside and brought a knife and then stabbed the deceased on his vital part of his body like chest. It has also come in the evidence of Dr. Waghmode i.e. PW-14, that said injury was likely to cause death in ordinary course of nature. Therefore, considering prima facie allegations, supported by eye witnesses against present applicant, we are not inclined to release him on bail by suspending his sentence of imprisonment. In the result, the application stands rejected.

9. Fees of the Advocate appointed to represent respondent No.2 be quantified as per Rules. Criminal application stands disposed of accordingly.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE.

grt/-