

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.5161 OF 2024
IN
CRIMINAL APPEAL NO.84 OF 2025

Firoz Ayub Meman @ Papa Applicant

V/s.

The State Of Maharashtra & Anr. Respondents

Mr.Bhanudas Jagtap a/w Mr.Ashish Jagtap and Ms.Aanushka Jagtap, for the Applicant.

Mr.S.S. Ghag, APP, for the Respondent-State.

Ms.Kanchan Pawar, for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 18th NOVEMBER 2025

P.C:-

. This Application is for suspension of sentence and enlargement of the Appellant/Applicant on bail in connection with the judgment and order dated 23rd September 2024 passed in Sessions Case No.88 of 2012 whereby the Appellant/Applicant came to be convicted for the offence punishable under Section 326 of the Indian Penal Code, 1860 ('IPC' for short) and sentenced to suffer five years rigorous imprisonment with fine of

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Rs.5 lakhs.

2. The learned counsel for the Appellant/Applicant, at the outset, submits that the offence against the co-accused has not been proved and he stood acquitted and criminal conspiracy is not established before the Trial Court. According to him, admittedly, the Appellant/Applicant herein was unknown to the informant and therefore no motive could be attributed against him for commission of crime. As far as proof of guilt of the Appellant-Accused is concerned it is his submission that the said guilt is solely based upon the identification of the Appellant/Applicant, firstly during the identification parade and before the Court. It is his submission by referring to the testimony of the victim as well as other witnesses to indicate that the identification parade was conducted at Tahasil Office and the suspects and the dummy persons were brought by the Police Officer himself. He further drew attention of the Court to the cross-examination of the victim which according to him indicates that the C.C.Tv footage of the incident was shown to the victim and as such she had before hand an opportunity to see the person

who is identified. In any case, it is his submission that, before identification parade has never given description of the present Appellant/Applicant to be the person who is committed crime in question and hence the identification even otherwise would be irrelevant.

3. The learned APP drew attention of the Court to testimony of the Medical Officer who had examined the Appellant/Accused on 6th February 2012 at around 11.00 p.m. It is his submission that, in the said examination an acid injury was found to the hands of the Appellant/Applicant. This submission of the learned APP is opposed by the learned counsel for the Appellant by drawing attention of the Court to the testimony of DW-1 who is Medical Officer before whom the Appellant/Applicant has produced after he was taken into custody at the end. It is his submission that, in the said examination no injury was found on the person of the Appellant/Applicant. He further has drawn attention of the Court to the Cross-examination of the Medical Officer which according to him indicates that, the said injury was old acid burn.

It is thus his submission that in any case the said injury cannot be considered as incriminating against the Appellant/Applicant.

4. In order to succeed in seeking the suspension of sentence and enlargement of bail, if the Appellant/Applicant has to make out the reasonable case for success in the Appeal. Herein this case *prima facie* perusal of evidence on record indicates that, the informant and the Appellant/Applicant were unknown to each other. At this stage, nothing is brought to the notice of this Court to indicate that, any description of the assailant was given by the informant before Test Identification Parade.

5. In light of this fact, the cross-examination of the victim indicates that, she had opportunity to see the CC Tv footage though it was never placed/brought before the Trial Court. This Court find *prima faice* substance in the contention of the Appellant/Applicant, that the Appellant/Applicant would be in a position to take exception at the time of hearing of this Appeal to the manner in which the Test Identification Parade is conducted.

6. This Court is conscious of the fact that, the offence

proved against the Appellant/Applicant is serious in nature, however, at the same time, it cannot be ignored that if the case is made out or fair chance of the success during the hearing of the Appeal, Appellant/Applicant cannot be denied the relief of enlargement of bail more particularly, when the imprisonment is of fixed term. The Appellant/Applicant had no history behind him of any crime. Imposition of appropriate condition would take care of apprehension of the victim, if any, and that Appellant/Applicant can be made available for hearing during the trial.

7. Asfar as the fine amount is concerned the learned counsel for the Appellant/Applicant submits that, the Appellant/Applicant is not in a position to pay the fine amount and in any case the fine amount is excessive.

8. It is not the law that, in every case unless the fine amount is deposited the suspension of sentence can not be ordered. This Court finds *prima facie* substance in the contention of the counsel for the Appellant/Applicant that the Trial Court without appreciating the status/financial condition of

the Appellant/Accused his imposed fine of Rs.5 lakhs. Trial Court might have noble intention to impose the fine so as to pay compensation to victim. However, at the same time, the Trial Court was required to take into account the financial status of the Accused which has not done in this case. In such circumstances, without insisting for deposit fine amount, the Application is allowed in the following terms.

ORDER

- (i) The Appellant-Firoz Ayub Meman @ Papa, be released on bail on furnishing a P.R. Bond of Rs.15,000/- with one surety in the like amount.
- (ii) Appellant not to directly or indirectly contact victim in any manner whatsoever.
- (iii) Any breach of the above condition would result in cancellation of bail.
- (iv) Bail before Trial Court.

(R.M. JOSHI, J.)