



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

CRIMINAL APPLICATION (APPA) NO. 585 OF 2024

IN

CRIMINAL APPEAL NO. 327 OF 2024

(LAXMINARAYAN @ CHANDAN S/O. BALKRUSHNA NAYAR...VS..STATE OF MAHARASHTRA, THR.
PSO PS RANAPRATAP NAGAR, NAGPUR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P.Dharmadhikari, Sr. Advocate a/b. Shri C.S.Dharmadhikari & Shri Tejas
Deshpande, Advocates for Applicant/Appellant.
Ms Shamsi Haider, A.P.P. for Respondent/State.

CORAM : ANIL S. KILOR AND
PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE ORDER : 02/04/2025

DATE OF PRONOUNCING THE ORDER : 25/04/2025

ORDER : (Per : Anil S. Kilor, J.)

1. Heard.
2. This is an application filed under Section 398 of the Code of Criminal Procedure (Cr.P.C.) for suspension of sentence and for grant of bail.
3. The applicant has been convicted along with co-accused Santosh Hiralal Shahu for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC) and sentenced to suffer R.I. for life and to pay a fine of Rupees Five Thousand and in default to suffer R.I. for three months. The applicant however, is acquitted of the offence punishable under Section 135 of the Maharashtra Police Act.

4. The prosecution case in a nutshell is that Anil Palkar had given his two shops on rent at Gopal Nagar and co-accused-Santosh was running a Grocery Shop and one Johnson who was running a Bakery Shop. There was a dispute in between accused No.1-Santosh and Mr. Johnson with Anil Palkar as regards handing over the possession of those two shops to Anil Palkar.

5. On 09.11.2020 Anil Palkar was present at his Farmhouse at Hingna. The informant Juber Ismile Khan (P.W.1), who is a fabricator, had been to the said farmhouse for completing fabrication work, at that time one other person namely Alok was present at the same place and one person namely Raju @ Raghu had also come to the said farmhouse.

6. The informant-Raju and Alok started proceeding from the farmhouse to Nagpur on two motorcycles. Anil Palkar sat on one of the said motorcycle as pillion rider. When they reached Gopal Nagar, Anil Palkar had got down from the motorcycle and started abusing Johnson and one lady who had installed tender coconut stall at the said place. As Anil Palkar had abused those persons, the applicant-Chandan came out of the bakery of Johnson and accused No.1 came out of Laxmi Grocery Shop and asked Anil Palkar as to why he was abusing and stated quarreling with him.

7. Thereafter, accused Nos. 1 and 2 started abusing and assaulting Anil Palkar by fist and kick blows. In between that period, Anil Palkar had fallen on the ground. Accused No.1 ran towards his grocery shop and returned back with a knife in his

hand and he started assaulting Anil Palkar by means of said weapon. After inflicting few blows to Anil Palkar, the applicant had taken said knife from accused No.1 and he had also assaulted Anil Palkar by inflicting blows of said knife. After the assault, the accused persons left the spot by leaving the knife there.

8. Due to the said assault allegedly committed by accused Nos.1 and 2, Anil Palkar had sustained injuries on his chest, neck and back. He was taken to Hospital, however, the doctor had declared Anil Palkar dead.

9. We have heard learned Senior Advocate Shri S.P. Dharmadhikari for the applicant and the learned A.P.P. for the State.

10. The learned Senior Advocate submits that the learned trial Court committed error in convicting the applicant. It is submitted that some material aspects have been ignored, namely except P.W.No.1 other witnesses became hostile and did not support the case of the prosecution.

11. It is submitted that the weapon which was seized from the spot is admittedly a single edged weapon which can cause incised wound and therefore, there cannot be any stab wound. However, in the post-mortem report 16 injuries were recorded and if those are considered, the injuries which are stab wounds are not possible. It is submitted that it creates doubt about the veracity of the prosecution story and further the correctness of the findings recorded by the learned Sessions

Judge. Shri Dharmadhikari, learned Senior Advocate, therefore, submits that the evidence which has been relied is neither wholly reliable nor wholly unreliable and therefore, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. It is therefore, argued that in absence of corroboration in material particulars, reliable, direct and circumstantial, the conviction is bad. To support this contention, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Khema .vs. State of U.P.*, reported in **(2023) 10 SCC 451**.

12. On the other hand, the learned APP has strongly opposed the application and submitted that P.W. 1-informant is the eyewitness who fully supports the case of the prosecution and narrated all the necessary details about the incident, including the role of the present applicant. It is further submitted that though P.W.-2 was declared as hostile, he admitted the presence of P.W. 1 and he therefore, submits that in view of the evidence of the eyewitness P.W. 1, the learned trial Court has rightly convicted the applicant.

13. We have perused the record and the impugned judgment and order. P.W. 1 is the eyewitness who has given complete account about the commission of the offence. The learned trial Court has considered the ocular evidence of the P.W. 1 in detail. Other eyewitnesses though not supported the prosecution case, however, it can be seen that P.W. 2 admitted that he himself, Anil Palkar, P.W. 1 and one other person had come to Gopal Nagar from the Farmhouse of Anil Palkar. He

further speaks about the fact that they went near the Grocery Shop and also stated that the accused No.1 came on the spot and assaulted the deceased.

14. Thus, the evidence of P.W. 1 can be said as reliable evidence which has attributed the specific role to accused Nos. 1 and 2 in the commission of the offence.

15. As far as the argument in respect of the weapon is concerned, more particularly the submission made to the effect that the weapon which was seized, can only cause incised wound and not stab wound, the post-mortem report shows that there were stab injuries. Hence, at this stage, this Court has to look into the *prima-facie* case based on the findings recorded by the Sessions Court and the evidence available on the record.

16. The Medical Officer clearly opined that the injury Nos. 7 to 11 and 13 to 16 mentioned in the post-mortem report are possible by the weapon seized by the police.

17. In the circumstances, the submission made by the learned Senior Advocate for the applicant that the evidence is not wholly reliable or wholly unreliable cannot be accepted at this stage and therefore, the judgment cited by the applicant is of no help for grant of suspension as sought by this application.

Accordingly, the application is **rejected**.

(PRAVIN S.PATIL,J)

(ANIL S.KILOR,J)