



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

CRIMINAL APPLICATION (APPA) NO.1041 OF 2024
IN
CRIMINAL APPEAL NO.600 OF 2024

Manish s/o Madan Rathod

Vs.

State of Maharashtra, through Police Station Officer, Police Station, Old
City, Akola, District Akola

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

Court's or Judge's orders

Mr. R. M. Daga, Counsel for the applicant.

Mr. C. A. Lokhande, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/01/2025

1. By this application, the applicant is seeking suspension of sentence and releasing him on bail in connection with Sessions Case No.79/2013.

2. The applicant is the original accused who was prosecuted under Sections 171-C-(2)(a) and 307 read with Section 34 of the Indian Penal Code and under under Sections 4 and 25 of the Arms Act.

3. After full fledged trial, the learned Sessions Judge pleased to convict the applicant and sentenced to suffer rigorous imprisonment for ten years and fine of Rs.50,000/-, in default further rigorous imprisonment for one year for the offence punishable under Section 307 of the Indian Penal Code.

4. Heard learned Counsel Mr. Daga for the applicant who submitted that the present applicant was on bail throughout the trial. He has not misused the liberty. Moreover, the role attributed to the present applicant is not of the assault, but as per the allegation, he has handed over the knife to the co-accused and the co-accused has dealt with blow. He submitted that as far as the allegation, he has handed over the knife. There is inconsistent evidence and the other allegation that he hold the hands of the injured and thereafter, blow was dealt is an omission which is proved through the evidence of the Investigating Officer. Thus, the applicant has fair chances of acquittal. In view of that, considering the appeal would take its own time for its final disposal. In the meantime, if the sentence is executed the appeal would become infructuous. In view of that, he be released on bail and the execution of the sentence be suspended.

5. Learned APP strongly opposed the said application and submitted that considering the appeal itself is devoid of merits, the application deserves to be rejected. He further submitted that though the applicant has not dealt a blow, but he was sharing the common intention with the other co-accused and therefore, the application deserves to be rejected.

6. After hearing both the sides and on perusal of the entire evidence on record. Admittedly, the role

attributed to the present applicant is only to the extent that he has handed over the knife to the co-accused and the co-accused has dealt with blow. It is further alleged that he has hold the hands of the injured and thereafter, the blow was dealt. As far as the evidence as to the holding of the hands is concerned, it is an improvement which is proved by the defence through the evidence of the Investigating Officer. Learned Counsel for the applicant has pointed out from the impugned judgment that he has many arguable points in the present appeal. Admittedly, the appeal would take its own time for its final decision. In view of that, the application deserves to be allowed. Admittedly, the considerations for grant of bail under Sections 437 and 439 are different than the suspension of sentence.

7. The Hon'ble Apex Court has dealt with this issue in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023** wherein in para no. 13 it is observed that "Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as

a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

8. Considering the law laid down by the Hon'ble Apex Court in the present case, learned Counsel for the applicant has pointed out that he has many arguable points in the present appeal. Moreover, the punishment imposed is of a limited period and the applicant was on bail throughout the trial. Considering all these facts, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.

(ii) The execution of the sentence passed in Sessions Case No. 79/2013 is suspended till disposal of the appeal.

(iii) The applicant shall be released on bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The applicant shall attend the Sessions Court on 5th of every month till the disposal of the appeal. The Sessions Judge shall record his presence.

The application is disposed of.

Criminal Appeal No.600/2024

1. The record and proceedings is already received.
2. The appeal is already admitted.
3. The appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)