

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

CRIMINAL APPLICATION NO. 168 OF 2019
IN
CRIMINAL APPEAL NO. 109 OF 2019

(Salim Baig S/o Lukman Baig & Anr. Vs. The State of Maharashtra, through Police Station Officer, Police Station, Talegaon (S.P.), Tah. Ashti, Wardha.

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

Court's or Judge's orders.

Mr. P.A. Tamboli, Advocate for the applicants.
Smt. Geeta Tiwari, APP for the State.

CORAM : S.M. MODAK, J.
DATE : 31ST MAY, 2019.

1. Heard learned Advocate Shri Tamboli for the applicants-accused and learned Additional Public Prosecutor Smt. Tiwari for the non applicant-State.
2. Both the applicants were convicted for the offence punishable under Sections 326 read with 34 of Indian Penal Code for causing grievous hurt to Jamila Parvin Amir Baig on 18th August, 2014. Applicant No.1 is brother-in-law of complainant, whereas applicant no.2 is the son of applicant No.1. The dispute has arisen on the ground of digging of pit for sanitary purpose in the courtyard. The incident took place at 8.30 p.m. Accused-Kalim was holding knife, who assaulted complainant by knife. Complainant sustained injury to his chest, right shoulder and face.

3. Initially, the police filed the charge-sheet for the offence punishable under Sections 307 read with Section 34 of Indian Penal Code. Injured-complainant, his wife and daughter were the eye witnesses apart from the other witnesses. The trial Court has not accepted the prosecution case for an offence punishable under Section 307 of Indian Penal Code but felt that offence under section 326 of Indian Penal Code was proved.

4. Learned counsel for the applicants relied upon the judgment in the case of Kiran Kumar Vs. State of M.P. reported in 2001 (9) Supreme Court Cases 211, in order to substantiate his contention that only in exceptional cases sentence need not be suspended during the pendency of appeal in High Court. I feel that this is not an exceptional case for refusing the suspense of sentence.

5. The applicants claim to be the permanent residents of Taluka Ashti, District Wardha. They were on bail during trial and trial Court has also suspended their sentence. They need to be given an opportunity to contest the appeal. They need not be sent to jail for undergoing of the sentence during the pendency of appeal. Hence, I pass the following order.

ORDER

- I. Criminal Application is allowed.
- II. Substantive jail sentence awarded to the applicants for an offence punishable under Sections 326

read with 34 of Indian Penal Code and substantive sentence awarded to applicant No.2 for the offence punishable under Section 4 read with Section 25 of the Arms Act, are hereby suspended during the pendency and disposal of the appeal subject to following conditions:.

a) Both the applicants are directed to furnish the personal bond and surety bond of Rs.20,000/- each before the trial Court.

b) The applicants to pay the fine amount, if not paid earlier.

c) The applicants to attend the hearing of the appeal.

The application is disposed of.

JUDGE