

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5720 OF 2015 IN APEAL/11/2015

GANESH S/O KARBHARI SATHE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr A K Bhosale
APP for Respondents: Mr. S G Karlekar

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WITH

CRI APPLN/5559/2015 IN APEAL/11/2015

DATTU @ DATTATRAYA JANARDHAN AWARE
VERSUS
THE STATE OF MAHARASHTRA.

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Mr. S.B.Talekar Advocate for applicant.
Mr. S.G.Karlekar APP for Respondent State.

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.

Dated: December 21, 2015

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PER COURT :-

1. Present Criminal Applications are filed for suspension of the substantive sentences. The applicants, in both these applications, are prosecuted and convicted for an offence punishable under section 302 read with section 149 of the Indian Penal Code, so also, section 143, 147 and 148 read with section 149 of the Indian Penal Code.

2. The learned counsel for the applicants in both applications submit that, the present applicants during the trial were on bail. The learned counsel submit that, as far as present applicants are concerned, there is no overt act against them in assaulting the deceased. Basic lacuna in the prosecution case is that the

Investigating Officer is not examined before the Court. According to the learned counsel, there are material inconsistencies in the depositions of witnesses. Learned counsel submits that even the statement of Vikas is unbelievable. He could not have seen the incident. His deposition is unreliable as far as his existence on the spot is concerned.

3. The learned APP submits that, these applicants have prevented the witnesses from saving the deceased. They had a common object.

4. We have considered the submissions. No doubt the evidence will have to be re-appreciated at the time of final hearing of the appeal. As far as present applicants are concerned, i.e. accused no.4 and accused no.6, there is no specific act attributed to them in assaulting the deceased. As per the judgment act of assaulting the deceased is attributed to accused nos.1, 2 and 3. Allegations against these accused is that they were preventing the witnesses from going towards the deceased to save him. Accused were on bail during the trial.

5. Considering the above, we are inclined to consider the instant applications.

6. The substantive sentences as awarded to the present applicants in S.C.No.48/2012 is suspended during the pendency and hearing of the appeal. Present applicants shall be released on bail, on their furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) each with one surety each of the like amount.

7. Criminal Applications are disposed of.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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aaa/-