

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.42 OF 2015
IN
CRIMINAL APPEAL NO.30 OF 2015

- 1) Udhalsing Jambusing Dudhani
- 2) Ujalasing @ Ujji Prabhusing Dudhani
- 3) Lakhansing Rajputsing Dudhani .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr. Vaibhav R. Gaikwad, Advocate for the applicants.

Mrs. Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 17th MARCH, 2015

P.C. :

1 The Appeal filed by the applicants challenging the judgment and order of their conviction as recorded by the Addl. Sessions Judge, Pune and the sentences imposed upon them, has already been admitted.

2 By the present application, the applicants/Appellants pray that the substantive sentences imposed upon them by the learned Addl. Sessions Judge, be suspended during the pendency of the Appeal, and that they be released on bail.

3 I have heard Mr.Vaibhav Gaikwad, learned counsel for the applicant. I have Mrs.Anamika Malhotra, learned APP for the State. With their assistance, I have gone through the impugned judgment and the notes of evidence adduced during the trial, copy of which is annexed to the application. So far as the applicant no.1 - Udhalsing Dudhani – is concerned, I find that as per the prosecution case, he was apprehended on the spot after having committed the alleged offences. The Application, so far as it relates to the applicant no.1, is not pressed.

4 As regards the other two applicants, Ujalasing has been identified as one of the culprits by a number of witnesses. However, the Test Identification Parade was held after six months from the date of incident, and after a month from the date of arrest of Ujalasing. The identifying witnesses are policemen. The prosecution case is that after the apprehension of applicant no.1, he had disclosed the names of his associates which included the name of the applicant no.2 – Ujalasing Dudhani.

5 So far as the applicant no.3 - Lakhansing Dudhani is concerned, he has not been identified by anyone as one of the culprits. I find that there is no satisfactory evidence against him.

6 I have been taken through paragraph no.27 of the impugned judgment. I find that the learned Judge has emphasized that the applicant no.1 Udhalsing was apprehended on the spot, and that he disclosed the name of the applicant no.2 and applicant no.3 immediately on his apprehension. The learned Judge has relied upon this as a piece of evidence.

7 It is submitted that a number of cases have been registered previously also against the applicant nos.2 and 3. A list of such cases has been given which shows that about 32 cases are pending against Lakhansing and about 26 cases are pending against Ujalasingh.

8 However, the hearing of the Appeal cannot take place immediately.

9 Considering the nature of evidence that was adduced against the applicant nos.2 and 3, and the contentions raised, it cannot be said that there are no points that would need serious consideration at the time of final hearing of the Appeal. These applicants are in custody for quite some time. The applicant no.2 is in custody for a period of about one year six months, and the applicant no.3 for a period of one year one month.

10 In the circumstances, I am inclined to allow their application subject to certain conditions.

11 The Application is partly allowed.

12 The Application, so far as it relates to applicant no.1 Udhsaling, is allowed to be withdrawn and stands dismissed as such.

13 The Application, so far as it relates to applicant nos.2 and 3 is allowed.

14 Pending the hearing and final disposal of the Appeal, the substantive sentences imposed upon the applicant nos.2 and 3 shall stand suspended, and the applicant nos.2 and 3 shall be released on bail in the sum of Rs.30,000/- each with one surety in like amount on the condition that they both shall report to the Shivaji Nagar Police Station, Pune on every Sunday between 11.00 a.m to 1.00 p.m till the disposal of the Appeal.

15 Any failure on the part of the applicants to report to the police station, as aforesaid, be forthwith brought by the Officer in-charge of the said police station to the notice of the trial court, which shall take further appropriate action in the matter by treating this bail order as if passed by it.

(ABHAY M.THIPSAY, J)