

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.184 OF 2015

IN

CRIMINAL APPEAL NO.190 OF 2015

Imtiyaz Kutuboddin Makrani & Anr.	...	Applicants
V/s.		
The State of Maharashtra	...	Respondent

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Mr.Manoj Mohite with Omkar Nagrekar i/b. Sudam Kale, Advocate for the Applicants.

Mrs.S.V.Gajare, APP for the Respondent/State.

Mr.Akash Bhalchin i/b.Ritesh Ratnam, Advocate for the Intervener.

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CORAM : ABHAY M. THIPSAY J.

DATED : 30TH APRIL 2015

P.C.

1. Heard Mr.Mohite the learned counsel for the applicants. Heard Mrs.S.V.Gajare the learned Additional Public Prosecutor for the respondent/State. Heard Mr.Bhalchin the learned counsel for the Intervener.

2. The applicants and five others were prosecuted on the allegations of their having committed offences punishable under Sections 395 of the Indian Penal Code (IPC), 307 of the IPC, 326 of the IPC read with Section 149 of the IPC and offences

punishable under Sections 143 of the IPC, 147 of the IPC, 148 of the IPC and 427 of the IPC, as well as the offences punishable under the Arms Act and the Maharashtra Police Act. The applicant No.1 was the accused No.2 and the applicant No.2 was the accused No.5 in the said case. After holding a trial, the Additional Sessions Judge, Nashik found five of the accused - i.e. accused Nos.1 to 5 - guilty of offences punishable under Sections 143, 147 148 of the IPC and Section 307 of the IPC read with Section 149 of the IPC. The accused Nos.6 and 7 were found not guilty and were acquitted. The applicants have been sentenced to suffer Rigorous Imprisonment for seven years with respect to the offence punishable under Section 307 of the IPC read with Section 149 of the IPC. They have also been sentenced to suffer Rigorous Imprisonment for a period of three months with respect to the offence punishable under Section 143 of the IPC, Rigorous Imprisonment for one year with respect to the offence punishable under Section 147 of the IPC and Rigorous Imprisonment for 18 months, with respect to the offence punishable under Section 148 of the IPC. It was directed that the substantive sentences would run concurrently.

3. The appeal filed by the applicants challenging their conviction and the sentences imposed upon them, has already been admitted. By the present application, the applicants pray that the substantive sentences imposed upon them be suspended till the appeal is finally disposed of.

4. With the assistance of the learned counsel for the parties, I have gone through the evidence adduced during the trial. I have also been taken through the relevant parts of the impugned judgment.

5. Two persons were injured in the incident. One is Sayyed Sagiruddin Muniruddin (injured who has sought intervention in the matter) and the other is Shakib Sherkhan. They were examined as prosecution witness Nos.3 and 4, respectively. There evidence shows that no overt act in the assault has been attributed to any of the applicants by any of these two witnesses. The role attributed to the applicants is of snatching away a gold chain which Sayyed Sagiruddin was wearing around his neck and of taking away cash of Rs.30,000/- which was in the cash counter of his shop.

6. There were other witnesses, who were supposed to be eye-witness, but none of them has attributed any specific role to any of the assailants.

7. It is based on the allegation of having snatched a gold chain and cash from the cash counter that a charge in respect of an offence punishable under Section 395 of the IPC was framed, but the applicants have been acquitted of the charge of the said offence.

8. I have gone through reasoning of the learned trial Judge while acquitting the original accused Nos.6 and 7.

9. The applicants were on bail during the trial. It is nobody's case that they had misused the liberty granted to them.

10. Arguable points needing serious consideration have been raised. In the ordinary course, the appeal is not likely to be heard within a short time.

11. Considering all the relevant aspects of the matter, I am inclined to allow the application.

12. Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the applicants/appellants shall stand suspended; and the applicants/appellants shall be released on bail in the sum of Rs.30,000/-, with one surety in the like amount, on the condition that they shall report to the trial Court on the first Monday of every calendar month, till the disposal of appeal.

Should the Court be closed on any given Monday, the applicants shall report to the trial Court on the next working day.

13. Any default by the applicants in reporting to the trial Court, as aforesaid, shall forthwith be brought to the notice of this Court, for further appropriate action in the matter.

14. Application is allowed in the aforesaid terms.

(ABHAY M. THIPSAY J.)