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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 364 OF 2015
IN
CRIMINAL APPEAL NO. 362 OF 2015

1. Bond @ Arun Suresh Ashok
Gaikwad
2. Jitya @ Yogesh Shantilal Bairagi .. Applicants

Vs.

The State of Maharashtra .. Respondent

Mrs. Sulbha A. Dhamale for applicants.
Mrs. Sangeeta D. Shinde, APP for State.

CORAM: P. V. HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

APRIL 08, 2015.

P.C.

1. The applicants by this application seek suspension of the substantive sentence of imprisonment and their enlargement on bail, pending the decision of the appeal. The applicants stand convicted for offence punishable under Section 302 read with Section 34 of the IPC on the allegations that the applicants had committed murder of one Gokul on 12/3/2012. The entire prosecution case revolves around the testimony of the two eye witnesses, namely, PW 6 – Abhaykumar and PW 1 – Sagar.

PW 6 – Abhaykumar is also an injured witness.

2. The evidence of PW 6 – Abhaykumar as well as the evidence of PW 1 – Sagar indicates that the applicant no.1/Original Accused No.1 – Bond @ Arun Suresh @ Ashok Gaikwad removed a knife and stabbed PW 6 – Abhaykumar as well as deceased Gokul. In the evidence of the two eye witnesses, no overt act is attributed to applicant no.2/Original Accused No.2 – Jitya @ Yogesh Shantilal Bairagi, apart from the fact that he was abusing to the deceased. We are further informed that applicant no.2 – Jitya @ Yogesh Shantilal Bairagi was on bail during trial.

3. The submission of the learned counsel for the applicants that the conviction of the applicants is based on the tented testimony of the interested eye witnesses, is a submission which cannot be dealt with at this stage as it would amount to re-appreciation of evidence. Suffice it to state that in the light of the testimony of the two eye witnesses, namely, PW 6 – Abhaykumar and PW 1 – Sagar, no case for suspension of the substantive sentence of imprisonment and release of applicant no.1 – Bond @ Arun Suresh @ Ashok Gaikwad on bail is made out. In so far as the case of applicant no.2 – Jitya @ Yogesh Shantilal Bairagi is concerned, we find that no overt act is attributed to him, apart from the fact that he had accompanied with Accused No.1 and was noticed abusing the deceased.

4. Accordingly, this application is partly allowed. This application stands dismissed in respect of the relief prayed for by applicant no.1/Original Accused No.1 – Bond @ Arun Suresh @ Ashok Gaikwad

and is allowed in respect of the relief prayed for by applicant no.2/Original Accused No.2 – Jitya @ Yogesh Shantilal Bairagi. The substantive sentence of imprisonment of applicant no.2 - Jitya @ Yogesh Shantilal Bairagi is suspended, pending the decision of the appeal and the applicant no.2/Original Accused No.2 – Jitya @ Yogesh Shantilal Bairagi is released on bail on his executing a PR bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial court. The applicant no.2 shall attend Adgaon Police Station once in three months i.e. on the first Saturday of the quarter between 8 a.m. to 9 a.m. till the decision of the appeal.

5. Application is thus partly allowed as indicated above.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)