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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 859 of 2015
IN
CRIMINAL APPEAL No. 703 of 2015

Mahadeo Waman Jagtap & (3) Ors ..Applicants/Appellants.

V/s

State of Maharashtra ..Respondent.

Mr Satyam H. Nimbalkar, i/by Satyam Nimbalkar, Advocate
for the applicants/Appellants.

Mrs Anamika Malhotra, APP for the State.

CORAM : A.R.JOSHI,J

DATE : 3rd September,2015.

P.C. :

1) Heard learned counsel for the applicants. Also heard the the learned APP for the State. This is an application for bail filed by the applicants/accused during pendency of the appeal. The appeal is already admitted.

2) The allegations against the applicants/original accused nos. 1 to 4 are that out of earlier vengeance they assaulted the complainant/PW no. 1 and his father by means of sword, iron rod and cycle and motorcycle chains. This happened on 28th June,2013. The dispute between the parties is over the

boundary of the agricultural fields.

3) The role assigned to the applicant no.1 is that of using sword and inflicting blow on the head of PW no.1 complainant. The complainant could escaped the assault by remaining aside but he sustained a blow on his left wrist and the left wrist was virtually amputated causing incised wound to the extent of 5 cms x 1 cm x 2.0 cms on medial aspect of the wrist. It was a grievous hurt and by chance the victim PW 1 escaped threat on his life. The role assigned to other applicants is use of iron rods, cycle and motor cycle chains. Applicant Nos. 2 and 3 are apparently aged 70 and 72 years respectively. Age of applicant no.4 is 46 years. However, the major role assigned in the matter is to applicant no.1 Mahadev Jagtap who is presently 53 years of age.

4) The trial Court appreciated the evidence of the prosecution witnesses including PW no.1 and one another eye-witness. Though admittedly the father of the complainant, who was also injured, was not examined, the trial Court came to the conclusion as to establishment of offence under section 307 of IPC.

5) Another aspect of the present case is required to be mentioned that after the incident of assault when the complainant went to the police station after medical treatment, the complaint was not recorded as to what he stated regarding the role of each and every accused and the weapons used by

them. As such the complainant chosen to lodge a private complaint alleging the offence against the applicants under section 307 of IPC along with other offences of rioting. It is a factual position that initially said private complaint was dismissed by the JMFC, Indapur. However, the revision application was preferred on the said order of dismissal and the Revisional Court gave directions to the trial Court to issue process under section 307 of IPC and then the matter was taken on such directions and the private complaint was also committed to the Court of Sessions along with charge-sheet filed by the police. As such, apparently since beginning itself it was the allegation of the complainant that the police had not conducted the investigation in the proper manner. Whatever it may be, the position stands as of today is the conviction against all the applicants mainly for the offence under section 307 of IPC.

6) Considering the role attributed to accused no.1, in the opinion of this Court, during pendency of the appeal, the present applicant no.1 cannot be released on bail. However, distinguishing the case as against applicant no.1 with that of against applicant nos. 2, 3 and 4, in the opinion of this Court, on certain conditions said applicant nos. 2, 3 and 4 can be released on bail during pendency of the appeal. Reportedly, fine amount is paid as stated by the learned counsel for the applicants. Hence, the order:-

: ORDER :

- (a) The application for bail and suspension of the substantive sentence is partly allowed. So far as the prayer for bail and suspension of the substantive sentence for applicant no.1 is concerned, same is rejected;
- (b) Applicant Nos. 2, 3, and 4 shall be released on same bail as granted by the trial Court on their executing fresh bonds to be executed before the trial Court.
- (c) The order granting bail to applicant Nos. 2, 3 and 4 shall be effective only after the payment of entire fine amount imposed against them.
- (d) After availing the bail, the applicant Nos. 2, 3 and 4 shall attend the concerned police station on first Sunday of each alternate month till disposal of the appeal.

Sd/-

(A.R. JOSHI, J.)