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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1551 OF 2014
IN
CRIMINAL APPEAL NO.1260 OF 2013

1. Mahendra @ Pintya Pandharinath
Awachare,

2. Amol @ Pappu Bhikaji Sonawane ... Applicants.

V/s.

The State of Maharashtra Respondent

Mr. Sachin Shivajirao Thombare, for Applicants.

Mr. H. J. Dedhia, A.P.P., for the Respondent-State.

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

DATE : 5TH MARCH, 2015.

P.C. : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. This application has been preferred by the appellant Nos. 3 and 4, who are the original accused Nos 3 and 4, seeking suspension of substantive sentence of imprisonment and for their enlargement on bail pending the decision of the appeal preferred by them alongwith original accused Nos 1 & 2.

2. Both the applicants alongwith the accused Nos 1 & 2 are convicted by the Court of Additional Sessions Judge, Pune, in Session Case No.96 of 2011, for the offence punishable under Sections 302, 452, 324, 505, read with 34 of the Indian Penal Code; and they are sentenced to suffer various terms of imprisonment. The maximum sentence imposed upon them is imprisonment for life, for the offence under Section 302 read with 34 of the Indian Penal Code.

3. On this application, we have heard learned counsel for the applicants and the learned APP.

4. As per the prosecution case, on account of some small altercation between the appellant Nos 1 & 2 and the deceased Shivaji, the appellant Nos 1 & 2 alongwith present applicants/appellant Nos 3 and 4 came to the house of the deceased and assaulted him and the witnesses with weapons like iron bar and big nail used in ploughing. As a result of assault, Shivaji sustained bleeding injuries and succumbed to the injuries 7 days after the incident.

5. The prosecution has placed reliance on the evidence of six eye witnesses. It is brought to our notice by learned counsel for the

applicants that as regards the presence of the applicants there is no convincing evidence on record. P.W.1 Laxman Gaikwad, the first informant and also an eye witness to the incident, has admitted that he has not stated the names of present applicants in the F.I.R. Similarly P.W.2 Sonali an eye witness to the incident has also admitted in her cross examination that she has not disclosed their names in her statement recorded by the police. P.W.3 Sitaram has also admitted that at the time of assault he was not knowing the names of present applicants and he has not disclosed their names in his statement. P.W.4 Shashikala, one more eye witness to the incident has stated in her examination-in-chief itself that the accused Nos 1 and 2 came there alongwith two colleagues. She has also not disclosed the names of present applicants. P.W.9 Sangeeta Gaikwad also admitted that she has not stated the names of present applicants before the police. P.W.10 Kishor Gaikwad has also admitted in his cross examination that he has not personally seen who assaulted the deceased Shivaji. P.W.11 Ujjawala Gaikwad has in her examination-in-chief itself stated that accused Nos 1 & 2 came alongwith two colleagues. Therefore, she had also not stated the names of present applicants either in the statement recorded before police or in the evidence before the Court.

6. Learned counsel for the applicants hence submitted that the applicants were on bail during the trial and there is no likelihood of the appeal being taken up for final hearing shortly, therefore, the applicants be released on bail.

7. In view of above submissions, in our considered opinion, it is a fit case to suspend the substantive sentence of imprisonment and enlarge the applicants on bail.

8. Accordingly, the application is allowed and the substantive sentence of the applicants is suspended and they be released on bail on their executing P.R. bonds in the sum of Rs.50,000/- by each of them with one or two sureties in the like amount, to the satisfaction of the trial Court. In addition thereto the applicants shall attend Rajgad Police station, District Pune, once in three months i.e. on first Saturday of the quarter between 11.00 a.m. to 1.00 p.m. till disposal of the appeal.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]