

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2252 OF 2016 IN
CRIMINAL APPEAL NO.254 OF 2016

Shri Prashant s/o Pravinsingh Girase
and others ... APPLICANTS

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri V.D. Sapkal, Advocate holding for
Shri Y.B.Bolkar, Advocate for applicants
Shri S.M. Ganachari, A.P.P. for State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 5th May, 2016.

ORDER :

1. This application for suspension of sentence and grant of bail has been filed by the applicants - original accused Nos.1, 3, 4 and 7, who have been convicted in Sessions Case No.101/2012 for offence punishable under Section 304 Part I read with Section 34 of the Indian Penal Code, 1860 (I.P.C. in brief). Accused No.1 has been additionally convicted for offence under Section 324 of the Indian Penal Code. Under Section 304 of the I.P.C., the sentence is of ten years rigorous imprisonment

and fine, and under Section 324, sentence is of three years rigorous imprisonment and fine. The accused persons have filed Criminal Appeal against the conviction.

2. I have heard learned counsel for the applicants - accused and learned A.P.P. for the State. The counsel have taken me through the judgment passed by the trial Court and the oral evidence, mainly of the complainant P.W.1 Walmik. Accused have filed copies of evidence and complaint for perusal.

3. The complainant appears to have filed the F.I.R. on 4.2.2012, informing that on that day, at about 12.00 o'clock in the afternoon, he was at his S.V.S. College to watch gathering along with his friend Santosh Daulat Nagrale (victim, who died in the incident). The gathering had started with fancy dress competition, and in the procession, the Principal N.O. Girase, professors and students had joined. In such procession, accused No.1 Prashant Girase along with 3-4 other persons was dancing with swords taken in hand. After the procession, gathering started and at about 3.00 - 3.15 p.m., programme of dance was going on. Standing outside the pandal, complainant and the victim Satish were watching the programme. Near them, accused No.1 Prashant Girase, accused No.3 Mayur Girase, accused No.4 Harshad (referred in the F.I.R. as Harshad Rajput) and with them 2-3 other persons were standing. Satish asked

accused No.1 as to why in the college he was dancing with swords. At this, accused No.1 Prashant along with other persons, who were standing with him, told Satish that the college was their, and the Chairman and Principal were also belonging to them. The F.I.R. mentions that the accused persons started giving abuse on caste and mother and sister and that accused No.1 Prashant, accused No.4 Harshad, accused No.3 Mayur and 2-3 other boys caught hold of collar of Satish and started beating him. Complainant intervened, but he was pushed aside and the beating continued. Satish, in order to escape, ran towards Mandal Chaufuli. These people followed him. Complainant also went behind to save Satish. These people caught hold of Satish at the Chaufuli and by kicks and blows, started beating him. At that time, one Maruti 800 bearing No.MH-04-B-7054 reached there, in which there was a college student. Complainant claimed that, he knows the student by face, but does not know his name. F.I.R. claims that, all these people took out swords and logs from the vehicle and using them, started beating Satish. Satish was carried across the road and at that time, accused No.1 stabbed the sword in the thigh of Satish and he fell down. Even thereafter the accused persons kept beating him by kicks and blows and logs. When complainant bent down to save Satish, accused No.1 hit on the back side of the head of complainant with the help of a sword. By that time, many students from the college had gathered there and thereafter the

accused persons ran away.

4. It is stated for accused that, on the basis of such F.I.R., offence was registered and the investigation was done and along with the present applicants/ accused, 3 more persons - accused No.2 Bhushan Girase, accused No.5 Rahul and accused No.6 Bhatu Girase were prosecuted. Regarding the incident, evidence of P.W.1 Walmik was brought on record. It is stated that, the trial Court has not properly appreciated the evidence and wrongly convicted the present accused. There was no test identification parade and the conviction is bad. It is argued, pointing out the evidence of P.W.1 that there were many contradictions and omissions. The conviction is based on sole testimony of the complainant and although several witnesses had seen the incident, they were not examined. It was not proved that the complainant himself was a student of the said college as it is argued that he wavered regarding the year in which he was studying. The complainant had not claimed in his F.I.R. that he was well acquainted with accused No.1 from before the incident. The evidence of the complainant regarding involvement of the accused persons was vague. The discovery of sword shown from accused No.1 cannot be relied on as although he was arrested on 5.2.2012, the discovery was made only 12.2.2012. There was delay in sending the muddemal to the Chemical Analyser. The Car seized was not MH-04-B-7054 as mentioned in the F.I.R. but

it was MH-01-B-7054. The number was corrected only in supplementary statement. In the F.I.R. only the names of accused Nos.1, 3 and 4 were mentioned. It was not stated that the complainant knew the other persons. Complainant improved his version in evidence regarding other accused. There was difference in the medical evidence regarding the complainant. The Cottage Hospital had found three injuries, but by the doctor at Civil Hospital, Dhule only two injuries were shown. For such reasons, the learned counsel for the applicants - accused submitted that the accused have got good case in appeal and they should be admitted to bail.

5. It is argued that, the accused No.1 has been in jail since 5.2.2012 till now. The other accused have also been in jail for different periods as mentioned in the impugned order para 4 itself. They were taken into custody when the conviction order was pronounced on 16.3.2016 and since that time, they are in custody. The learned counsel relied on the case of **Bhagwan Rama Shinde Gosai Vs. State of Gujarat** reported in **(1999) 4 SCC 421** and the case of **Angana & anr. Vs. State of Rajasthan,** reported in **AIR 2009 SC 1669** to support his submissions that the bail needs to be granted to the accused persons.

6. The learned A.P.P. opposed the application to grant

bail, and according to the learned A.P.P., there was convincing evidence of P.W.1 available on record. There was medical evidence in support of the prosecution regarding the fact that death of the victim took place due to the stabbing of sword into the thigh of the victim. The weapons were discovered and recovered from the accused persons and according to the A.P.P., this is serious matter in which the accused persons involved themselves and should not be released on bail looking to the facts of the matter.

7. Before discussing the matter, it would be appropriate to refer to the observations of the Honb'le Supreme Court. In para 3 of the judgment in the matter of "Bhagwan Rama Shinde" (supra), the Hon'ble Supreme Court observed that when a convict person is sentenced to a fixed period of sentence and he files an appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances. It can be seen that, sentence can be suspended unless there are exceptional circumstances. It will be important to see if there are exceptional circumstances not to suspend the sentence.

8. In the matter of "Angana Vs. State of Rajasthan" (supra), the Hon'ble Supreme Court referred to observations in the matter of "Kashmira Singh Vs. State of Punjab" reported in

(1977) 4 SCC 291 and the observations therein. It was observed:

The Court going by the said consideration held that :-

"that so long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail where special leave has been granted to the accused to appeal against his conviction and sentence. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate Court, he cannot be said to be an innocent person until the final decision is recorded by the superior Court in his favour."

9. Referring to other judgments in this regard, the Hon'ble Supreme Court observed in para 22 of the judgment as follows :

"22. Taking into consideration overall view of the matter and in particular offence alleged and sentence imposed and further taking into consideration the acquittal of other accused persons, who were also charge-sheeted in the same offences as that of the appellants and further taking into consideration the conduct of the appellants during the trial before the Sessions Court when they were on bail, in our view the High Court could have suspended the sentence and granted bail to the appellants."

10. Thus, considering particular offence alleged and the sentence imposed, and considering the acquittal of other accused who were also charge-sheeted in that matter, and that the

appellants therein were on bail during trial, the relief was granted by the Hon'ble Supreme Court.

11. Keeping the above factors in view, it would be now necessary to appreciate if in present matter also bail should be granted.

12. Going through the material available, it can be seen that there was evidence of complainant P.W.1 Walmik regarding the incident. P.W.2 is spot panch. P.W.3 Walmik was inquest panch. P.W.4 Kishor was panch regarding seizure of the car and from it, cover of sword was seized. P.W.5 and P.W.6 were examined with regard to seizure of clothes. P.W.7 Dr. Ajit did post mortem. P.W.8 to P.W.11 were examined regarding discovery and seizure of various swords, wooden logs and sticks from different accused. P.W.12 and P.W.13 were regarding the medical examination done by doctors of the complainant. P.W.14 is investigating officer.

13. The learned counsel for the applicants - accused has referred to the facts and evidence of the case, to argue that the accused persons have good case on merits. I have thus gone through the material and prima facie I find that the evidence of the trial Court is well reasoned. The trial Court carefully examined the evidence of P.W.1 complainant Walmik who had

been extensively cross-examined and keeping in view the contents of the F.I.R., the trial Court dealt with all the issues which were raised before it. Trial Court considered all the points which were raised before it and which have been now raised before me and answered the same with regard to the merits of the trial. By and large F.I.R. and evidence of P.W.1 prima facie match. In paras 39 and 40 of its judgment, the trial Court gave reasons as to why it was convicting accused Nos.1, 3, 4 and 7, while it was giving benefit to the other three accused who were being acquitted. It appears that, the accused Nos.1, 3 and 4 were named in the F.I.R. itself and with regard to accused No.7 in the F.I.R. the complainant had mentioned that he was the person who drove down the Maruti to bring instruments like sword and wooden logs which were used by the accused persons thereafter to cause injuries to the victim. In complaint, P.W.1 had stated that he knows this college student by face but does not know his name. Thus, prima facie it can be seen that the trial Court properly distinguished the case of the present applicants - accused vis-a-vis the accused who came to be acquitted. It was the duty of the trial Court to separate the grain from the chaff. Trial Court found the testimony of the sole witness appealing and convicted the accused.

14. The facts of the matter show a frightening picture of atmosphere in college gathering, where some students come out

with swords in their hands to dance and when objected to, attack the person to the extent of killing him. Looking to the gravity of the offence and the manner in which it was committed and prima facie material as above, I do not think that this is an appropriate case to grant bail. As per information told by registry, oldest Criminal Jail Appeal of Single Judge pending in this Court are four (4) of 2014 and total Jail Appeals are only 15 and appeals till 2015 are listed for hearing. Thus, it is possible to take up this appeal in reasonable time. It would be more appropriate to expedite final hearing of the appeal itself rather than releasing the accused persons on bail.

15. I thus pass the following order :

ORDER

The application is rejected.

I am proceeding to admit the appeal and expedite the hearing of same so as to be taken up after Summer Vacation.

(A.I.S. CHEEMA, J.)