

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

CRIMINAL APPLICATION NO.3852 OF 2016
IN
CRIMINAL APPEAL NO.427 OF 2016

Rajputra Shriniwas Subbkaransingh,
Age 51 years, Occu. Service,
R/o Railway Quarters, 128/2, Purna,
Taluka Purna, District Parbhani ..Applicant

Versus

The State of Maharashtra ..Respondent

Mr Satej S. Jadhav, Advocate for applicant
Mr A.V. Deshmukh, A.P.P. for respondent

- WITH -

CRIMINAL APPLICATION NO.3868 OF 2016
IN
CRIMINAL APPEAL NO.430 OF 2016

Tulshiram s/o Ramji Pawar,
Age 39 years, Occu. Service,
R/o Hanuman Nagar,
Plot No.27, Nanded ..Applicant

Versus

The State of Maharashtra
through Railway Police Station,
Nanded ..Respondent

Mrs S.G. Chincholkar, Advocate for applicant
Mr A.V. Deshmukh, A.P.P. for respondent

- WITH -

CRIMINAL APPLICATION NO.3964 OF 2016
IN
CRIMINAL APPEAL NO.436 OF 2016

Jeevan s/o Rangnath Sabne,
Age 40 years, Occu. Service,
R/o Tathagat Nagar, Taroda (Kh),
Nanded, Taluka and Dist.Nanded ..Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Railway Police Station,
Nanded, District Nanded

..Respondent

Mr M.M. Ambhore, Advocate for applicant
Mr A.V. Deshmukh, A.P.P. for respondent

CORAM : V.L. ACHLIYA, J.

DATE : 16th September 2016

PER COURT

1. The applicants have preferred separate appeals challenging the judgment and order dated 5th July 2016 passed by Additional Sessions Judge, Parbhani in Special (Atrocity) Case Nos.3 of 2012 and 40 of 2013, whereby the applicants are held guilty of committing offences punishable under Sections 306, 330, 348 read with Section 34 of the Indian Penal Code. For committing offence under Section 306 read with Sec.34 of Indian Penal Code, the applicant - accused No.1 Rajputra Shriniwas Subbkaransingh has been sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.2 lakhs. For committing offence under Section 330 read with Sec.34 of Indian Penal Code, the said accused is sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.1 lakh and for committing offence under Section 348 read with Sec. 34 of Indian Penal Code, sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.1 lakh. The other accused i.e. applicants No.2 (Tulshiram Ramji Pawar) and applicant - accused No.5 (Jeevan Rangnath Sabne) are sentenced to same term as of accused No.1, but they were ordered to pay fine of Rs.1,000/- each for each of the offence.

2. The applicants along with co-accused Nos.3 and 4 were tried for offences under Sections 306, 330, 341, 342, 348 read with Section 34 of Indian Penal Code and under Sections 3 (1) (viii), 3 (2) (v) (vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On conclusion of trial, the accused Nos.3 and 4 were acquitted and the accused Nos.1, 2 and 5 are held guilty and convicted and sentenced as above.

3. On 27th February 2011, the applicants and the co-accused were claimed to be posted as Police personnel with the Railway Protection Force and posted at Poorna Railway Police Station, District Parbhani . On 27th February 2011, the deceased Durgaprasad was taken from his home by the Railway Protection Force personnel attached to Railway Police Station, Poorna on the pretext of making inquiry. He was illegally detained at Police Station from 27th February 2011 onwards till 1st March 2011. Without following the protocol of the arrest and the guidelines as laid down in detail by Apex Court in case of **D.K. Basu Vs. State of West Bengal**, reported in **(1997) Vol I SCC 416**, the deceased was detained and beaten at Police Station under the pretext of interrogation. He was not provided with the food and other necessities. Due to such humiliation, harassment and merciless beating, the deceased locked himself in the room of A.S.I. and hanged himself. At the relevant time, present applicants alleged to be present in the Police Station. The intimation in respect of the incident of committing suicide by Durgaprasad in Police Station was given by

applicant No.1 - Rajputra to his superior Officers. Initially, the A.D. was registered and later on, on the basis of complaint lodged by wife of the deceased, the offence under Section 306, 330, 341, 342, 348 read with Sec.34 of Indian Penal Code and offence under Sections 3 (1) (viii), 3 (2) (v) (vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were registered. On conclusion of inquiry, the applicants along with the co-accused Nos.3 and 4 were charge-sheeted and tried before the Sessions Court, Parbhani. In order to bring home the guilt against the accused, 14 witnesses were examined. On conclusion of the trial, the present applicants are held guilty and convicted as above.

4. Learned Counsel for the applicants strenuously contended that there is no cogent and convincing evidence to establish any of the offence against the applicants. It is pointed out that most of the witnesses have turned hostile. There is no evidence to establish remotely that the applicants have abetted the commission of suicide by the deceased. On the contrary, there is evidence on record to show that the number of criminal cases registered against him and he was also convicted in one case. He was under stress due to financial condition. It is further submitted that during the trial, the applicants were on bail. It will take long time to list the appeals for hearing. It is further submitted that the applicants have deep roots in the society and there is no question that they will abscond and avoid the process of law.

5. Learned A.P.P. has opposed the application with contention that the prosecution has proved its case beyond reasonable doubt. There is sufficient evidence to establish the complicity of each of the accused in commission of the guilt. He has pointed out that during the post mortem report, number of injuries were found on the body of deceased which were fresh in nature clearly suggests that the deceased was mercilessly beaten before he committed suicide. The deceased was illegally detained at Police Station. Immediately before the incident, the present applicants were seen present at the Police Station by prosecution witness - P.W.5. It is also contented that looking to the nature of offence, heinous crime committed by the applicants, the applications be rejected.

6. In order to appreciate the submissions advanced, I have perused the copies of depositions and the judgment and order passed by the trial Court. No doubt, the crime committed is a heinous offence. At the stage of dealing with the application, the Court is supposed to confine itself with the nature of offence, seriousness of the offence and sentence awarded, the antecedents, whether the accused was on bail prior to conviction and chances of abscondence. On perusal of the evidence on record, I am of the view that arguable case has been made out to be considered in appeal, as to whether in the given facts and circumstances of the case and evidence on record, the accused can be held to be guilty for committing offence under Section 306 of Indian Penal Code. It appears from the evidence on record that most of the witnesses have not supported the prosecution.

The case is mostly based upon testimony of P.W.5, who has seen the applicants present in the Police Station immediately prior to the incident of commission of suicide by the deceased. During the trial, the applicants were on bail. They are in government service. It will not be possible to hear the appeals within the short time. I am, therefore, of the view that the applicants be released on bail pending disposal of appeals. Hence, the following order:

ORDER

- (I) Criminal Applications are hereby allowed.
- (II) Pending disposal of appeals, the substantive sentences awarded by the trial Court stands suspended till disposal of the appeals on precondition to deposit the fine amount.
- (III) Pending disposal of the appeals, the applicants - Rajputra Shrinivas Subbkaransingh, Tulshiram s/o Ramji Pawar and Jeevan s/o Rangnath Sabne be released on bail on each of them furnishing the bail in the sum of Rs.50,000/- (Rs. Fifty thousand) with one surety in the like amount.
- (IV) The applicants shall furnish the names, addresses, phone numbers of their three close relatives.

(V) The applicants shall report and record their attendance with Police Station, Poorna on first day of each month between 10.00 a.m. to 11.00 a.m., till disposal of the appeals.

(VI) In case of change in addresses, the applicants shall communicate the same to concerned Police Station as well as this Court.

(VII) In case of breach of any of the conditions, the bail granted to the applicants shall be liable to be cancelled.

8. Criminal Applications stand disposed of accordingly.

(V.L. ACHLIYA, J.)

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