

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 119 OF 2016
IN
CRIMINAL APPEAL NO. 59 OF 2016

1. Suresh @ Sonya Sitaram Bhadane)
2. Nitin Sitaram Bhadane)
3. Pramilabai Sitaram Bhadane).. Applicants

vs.

The State of Maharashtra ... Respondent

Mr. Kuldeep S. Patil, Advocate for the applicants.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 20th April, 2016.

P.C.

This is an application under Section 389 of Cr.P.C. seeking suspension of substantive sentence during the pendency of the appeal.

2. The applicants herein are convicted for the offence punishable under Sections 304 (II), 325 and 341 read with Section 34 of Indian Penal Code and are sentenced to suffer R.I. for seven years and fine of Rs.5,000/- each in default R.I. for three months by the Adhoc Additional Sessions Judge, Malegaon, in Sessions case No.106 of 2005 vide judgment and order

dated 8.1.2016.

3. The learned counsel for the applicants submits that the applicants were on bail during the pendency of the trial and have not committed breach of any conditions imposed upon them and hence, they are entitled to the extension of the same relief during the pendency of the appeal. The learned counsel for the applicants has drawn attention of this Court to the evidence adduced by the prosecution. It is a matter of record that the applicant No.3 was also injured in the incident dated 20.10.2014. That a case was registered which is registered as RCC No.241 of 2004. The learned counsel submits that the trial of RCC No.241 of 2004 is not yet concluded. The evidence of Dr. Shubhada Nikumbha as defence witness has been considered.

4. It is the case of the prosecution that on 20.10.2004, Pundalik Bhadane, his wife and his brother Dhondu (deceased) and his labour Ahire were proceeding towards Kotbel Road. When their car had reached near the house of Sitaram Suresh, the present applicants had restrained their car. They had assaulted Pundalik and others and when Dhondu had intervened to pacify at that time Suresh, Nitin and Pramila who were armed with sticks

had assaulted Dhondu from his back side on his head. They had also assaulted with fist and kick blows. Dhondu was admitted in the hospital. According to PW-1, his wife had pushed Pramila in order to restrain her from assaulting and at that time Pramila had fallen down and had sustained injury. It appears from the records that Pundalik had been to the Police Outpost and had lodged a report about the said incident. Crime No.107 of 2004 was registered against the present applicants for the offence punishable under Section 326 of IPC. Investigation was set in motion. On 9.11.2004, Dhondu was discharged from the hospital. His statement was recorded by PW-3 and he had reported that on 20.10.2004, he was assaulted by the present applicants. Thereafter, Dhondu had again fallen ill and was admitted to the hospital on 22.11.2004. he succumbed to the illness on 29.11.2004. Thereafter offence was registered under Section 302 of IPC. It is pertinent to note that the statement of deceased Dhondu has not been treated as a statement under Section 32 of the Indian Evidence Act.

5. The learned counsel for the applicants submits that there is a civil dispute between the parties. That the prosecution witnesses had filed a suit seeking injunction. No orders were passed under Order XXXIX Rules 1 and 2 by both the Courts below and a proceeding was pending before the

High Court at the time of the incident. No doubt, there was a civil dispute between the parties. The very fact that Dhondu had died practically after one month and nine days of the alleged incident and that too after he was discharged from the hospital. Prima facie, it cannot be said that the applicants had assaulted with the knowledge that their act would result into death of Dhnodu.

6. The learned counsel has further submitted that the doctor who had conducted the autopsy on the dead body of Dhondu i.e. PW-4 Dr. Sharad Patil has specifically deposed before the Court that he had mentioned old healed wounds in column No.17. The doctor had given an opinion that there was intra cerebral injury due to head injury. The injury was more than one month old. According to the doctor, intra cerebral bleeding is a continuous process and that at the time of bleeding, it bleeds for some time. Thereafter there is a clot formation. He has observed that there were clots and he could not be certain as to whether clot was due to assault or Cerebrovascular accident. The doctor has further deposed that if the patient has suffered internal bleeding, there is possibility of recurrence. The recurrence is due various reasons. The learned counsel submits that the cause of death also could be improper medical treatment or diagnosis.

However, all these aspects pertain to appreciation of evidence.

7. Taking into consideration the fact that Dhondu had not died instantaneous death, he had recovered, his statement was recorded and thereafter he was again admitted to the hospital on 20.11.2004 i.e. practically after one month and has succumbed to the same on 29.11.2004 is sufficient to grant bail to the present applicants. Moreover, applicant No.3 is a lady. She was injured in the said incident. PW-1 has made a failed attempt to explain the injuries on the person of the applicant No.3. However, that can be considered at the stage of final hearing. It is not likely that the appeal would be taken up for final hearing in the near future.

8. Reliance can be placed upon the Judgment of the Apex Court in the case of **Kiran Kumar vs. State of M.P. 2001 AIR SCW 5130** for seeking suspension of substantive sentence during the pendency of the appeal which cannot be heard at the earliest thereby causing the prayer to become infructuous.

9. In view of the above, the applicants deserve to be enlarged on bail.

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicants is hereby suspended. They be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each and one or more sureties in the like amount.
- (iii) The applicants be enlarged on provisional cash bail for a period of four weeks within which they shall furnish solvent sureties.
- (iv) The applicants shall cause their appearance before the Court of Addl. Sessions Judge, Malegaon once in six months on the dates specified by that Court.
- (v) In case of failure to attend on any two consecutive dates, the proecution shall be at liberty to move for cancellation of bail
- (vi) Parties to act on an authenticated copy of this order.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)