

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 248 OF 2016
IN
CRIMINAL APPEAL NO. 149 OF 2016

1 Ramchandra Shahu Mane.
2 Santosh Pandurang Mane. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Rishi Bhuta, advocate for Applicants.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : MARCH 1, 2016

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State.

2 This is an application under Section 389 of the Code of Criminal
Procedure, 1973 seeking suspension of substantive sentence imposed
upon the applicants. The applicants herein are original Accused Nos.

1 and 2 in Sessions Case No. 198 of 2014. The learned Additional Sessions Judge, Greater Bombay vide Judgment and Order dated 30/1/2016 has been pleased to convict the applicants for the offence punishable under Section 304(II) read with Section 34 of the Indian Penal Code and has sentenced them to suffer R.I. for five years and to pay fine of Rs. 5,000/- each in default to suffer S.I. for six months.

3 The applicants were in custody from 26/9/2013 to 16/12/2014. Thereafter, by an order dated 16/12/2014, they were enlarged by this Court. The applicants were taken into custody on 30/1/2016 and hence, the applicants have undergone substantive sentence of one year and four months during the pendency of the trial as well as after the conviction. The sentence imposed upon the applicant is a short term sentence.

4 Perused the medical evidence. It appears from the evidence of P.W. 9 Dr. Shri Harshulhas Namdeo Pansewdikar that the deceased had sustained injuries in the nature of abrasions and contusions. At

the time when the autopsy was conducted, there were post-mortem sutured injuries as is admitted by the witness. The doctor has opined that the cause of death was due to head injury with multiple contusions. It is also admitted by the doctor that before autopsy was conducted by P.W. 9, it had already undergone post mortem in Rajawadi Hospital. There is difference of the description of injuries in respect of the size of the injuries. It is also admitted by P.W. 9 in the cross-examination that the bluish colour of the injury would reflect that the age of the injury was more than 2 to 3 days.

5 The learned Counsel for the applicants submits that in view of the discrepancies in the evidence adduced by the prosecution, the applicant would be entitled to grant of bail during the pendency of the appeal. The learned Counsel has drawn the attention of this Court to the substantive evidence of the solitary eye witness i.e. P.W. 8 Dattaram Jagannath Kadam, who had admitted in the cross-examination that he had made statement before the Magistrate under

Section 164 of the Code of Criminal Procedure, 1973 due to pressure of police.

6 Taking into consideration the evidence adduced by the prosecution and the fact that the applicants have been in jail for one year and 4 months, this Court is inclined to grant bail.

7 Hence, following order is passed :

ORDER

(i) The Criminal Application is allowed.

(ii) The substantive sentence imposed upon the applicants is hereby suspended. They be enlarged on bail. Same bail fresh bond.

(iii) The applicants shall furnish their residential addresses, contact numbers like landline number, cell phone number etc. to the concerned court.

(iv) The applicants shall report to the Court of Sessions, Gr. Bombay once in 6 months on the date specified by the concerned court. Upon failure to attend on two consecutive dates, the prosecution is at liberty to move for cancellation of bail.

8 The Criminal Application is disposed of accordingly.

Parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)