

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 726 OF 2016
IN
CRIMINAL APPEAL NO.403 OF 2016

Devidas Phula Pawar & Anr. Vs. The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. M.K. Kocharekar for applicants.
Ms. Anamika Malhotra, APP for State.

CORAM : A.S. GADKARI, J.
DATE : 7th July 2016.

P.C.:

- 1) This is an application for suspension of sentence and for releasing the applicants on bail.
- 2) By the Judgment and Order dated 17.5.2016 passed by the Ad-Hoc Additional Sessions Judge-1, Malegaon, District-Nashik in Sessions Case No.25 of 2009, the applicants are convicted under Section 304 (II) and 323 read with 34 of the Indian Penal Code and sentenced to suffer maximum rigorous imprisonment for five years and to pay fine of Rs.5000/- each and in default of payment of fine to further undergo rigorous imprisonment for three months.

3) The learned counsel for the applicants submitted that the alleged eye-witnesses namely PW-1 Prakash Gangurde and PW-3 Smt. Indubai Pawar cannot be termed as reliable eye-witnesses as material omissions have been brought on record in their cross-examination. That the said eye-witnesses have stated that they witnessed the incident i.e. blows with stick given by the applicant No.1 on the head of the deceased Phula Pawar, however, the said fact is an omission with reference to their statement given to the police. He further submitted that as far as the applicant No.2 is concerned, no active role has been attributed to her in the entire crime and she has been convicted with the aid of Section 34 of the Indian Penal Code.

4) I have perused the entire record available before me and I find that there is substance in the submissions of the learned counsel for the applicants. The maximum sentence imposed upon the applicants is of five years of rigorous imprisonment. This is a short term sentence. There is possibility of the appeal being heard on its own merit in the near future. The applicants were on bail during the trial and there is no adverse report of breach of any condition of the bail during the said period.

5) In view of the above, I am inclined to grant bail to the applicants. Hence, the following Order:

(i) The applicants be released on bail on their furnishing PR bond of Rs.15,000/- each with one or two separate local sureties in the like amount;

(ii) Before their release from jail, the applicants to deposit fine amount in the Trial Court;

(iii) After their release from jail, the applicants to attend the Trial Court once in six months on every first Monday of the month

between 11.00 a.m. to 1.00 p.m.

(iv) Any two consecutive defaults in attending the Trial Court will attract the provisions of cancellation of bail.

- 6) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)