

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.514 OF 2016

IN

CRIMINAL REVISION APPLICATION NO.496 OF 2016

RANDHIR SURESH PATIL AND ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kuldeep Patil, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 7th SEPTEMBER 2016.

P.C. :

1 This application is for suspension of substantive sentence imposed upon applicants and for grant of bail. Learned counsel for applicants has contended that applicants are convicted for the offences punishable under Sections 147, 148, 323, 324 read with Section 149 of IPC and for the offence punishable under Section 324 of IPC are directed to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for 30 days. It is further pointed out that for rest of the offences, punishment

is for 3 months. It is, thus, case of applicants that as maximum sentence imposed upon applicants under section 324 of IPC is for 6 months and that being short sentence, application be allowed.

2 Learned counsel for applicants has further submitted that even otherwise from the evidence of injured / informant Ramkrishna Mhatre, no role of any of the applicants can be established as his evidence does not corroborate with the medical evidence on record. It is, thus, prayed that substantive sentences imposed upon applicants be suspended and applicants be released on bail. It is also contended that applicants were on bail throughout and had made payment of amount of fine imposed upon them.

3 Learned APP opposed the application contending that there is direct evidence corroborated with medical evidence.

4 Perused the impugned judgment wherein, in paragraph 11 thereof, evidence of injured Ramkrishna is analyzed, who is stated to have deposed that he was assaulted by accused no.1 Randhir by sword on his palm of left hand, accused no.3 Prakash by chopper on chin, accused no.4 Chintamani by crowbar on left leg, accused no.2 Macchindra by cricket

bat, accused no.5 Vilas by stump and accused no.6 Kesarinath by zara (container used for watering plants). From the impugned judgment it is further revealed that similar is the evidence of PW4 and PW6.

5 In paragraph 21 of judgment, learned appellate court had considered the medical evidence which reveals that on examination of informant, he was found to have sustained CLW on left palm, laceration on left lower limb, contusion over frontal region on the right side and CLW on chin. Thus, it is found that injury no.1 aforestated, as per evidence of complainant, is by sword caused by accused no.1, injury no.2 is by crowbar caused by accused no.4, injury no.3 is by cricket bat caused by accused no.2 and injury no.4 is by chopper caused by accused no.3, as stated by informant as per his evidence aforestated. In the line of evidence on record, on considering further evidence of Medical Officer, he has deposed that he is unable to give any opinion if CLW caused on left palm is possible by sword, and if laceration caused on left lower limb is possible by iron rod, which informant claims to have sustained by crowbar. Though Medical Officer has further deposed that contusion over frontal region is possible by bat, it is noted that PW3 – informant's evidence is silent with regards to location of injury alleged to have been sustained by him by bat. Similarly, CLW on

chin is stated to be not possible by chopper. Medical evidence further reveals that all the injuries sustained by informant are possible by fall on ground.

6 Having considering above discussed evidence as well as considering the fact that though applicants are found to be convicted for the offence punishable under Sections 147, 148, 323 and 324 read with Section 149 of IPC, conviction for the offence punishable under Section 324 of IPC imposed upon applicants is the only maximum sentence of conviction to the extent of 6 months rigorous imprisonment, in the circumstances, application for suspension of substantive sentence imposed upon applicants as well as for their release on bail is liable to be allowed.

7 Moreover, though prosecution appears to have examined independent witnesses to prove recovery of weapons from applicants, none of the panch witnesses supported the case of prosecution. Moreover, all the applicants are stated to be on bail pending trial as well as during the pendency of appeal, and it is no case of prosecution that while on bail, they had misused liberty granted to them.

8 In that view of the matter, application is liable to be allowed, as per order below :

- i) Applicants shall be released on bail on their executing P.R.bonds in the sum of Rs.10,000/- each with one surety each in like amount.
- ii) While on bail, applicants shall mark their presence with Alibag Police Station once in six months and shall produce their proof of residence and shall intimate change of address in future, if any, to the concerned police station.

(P N. DESHMUKH, J.)