

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1162 OF 2016

AND

CRIMINAL APPLICATION NO.1163 OF 2016

IN

CRIMINAL APPEAL NO.627 OF 2016

BALAJI @ ANANT ASHOK SABLE & ANR.)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Niranjan Mundargi, Advocate for the Appellants.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 5th OCTOBER 2016.

P.C. :

1 These applications are filed by original accused no.1 Balaji Sable and accused no.2 Ganesh Sathe for suspension of substantive sentence imposed upon them and for grant of bail.

2 Heard learned counsel for applicants and learned APP. It is contended that the case of prosecution is doubtful from its inception as according to applicants, though inquest panchnama involved in this

crime is found to be carried out at 2.00 a.m. in the night intervening 21st April 2008 and 22nd April 2008, FIR is found registered thereafter at 4.25 a.m., for which, according to applicants, no explanation is put forth by prosecution.

3 Learned counsel for applicants further pointed out that though according to spot panchnama weapon kukri, which from the witnesses on record is attributed to applicant no.1 Balaji, was found on the spot, same is having edge on its one side, and as such, injuries whatsoever are found on the person of the deceased, should not have clean cut injuries. Learned counsel has further contended that prosecution has examined only interest witnesses being brother, widow, mother and sister of deceased. It is, therefore, contended that applicants who are awarded maximum sentence of 7 years and 3 years respectively, for the offence punishable under Section 307 of IPC be released on bail on suspending their sentence as the applicants were on bail pending trial.

4 Learned APP had opposed the applications on the ground that there is direct evidence and there is no sufficient evidence to establish that applicants are not involved in this crime.

5 In the background of submissions advanced as aforesaid, perusal of FIR reveals that same came to be registered on 22nd April 2008 on receiving information to police station at 4.25 a.m., while from the contents of inquest panchnama on record, same appears to have been drawn on the same night between 2 a.m. and 3 a.m. in Sasoon hospital, Pune. There is no explanation put forth by learned APP on this aspect as to how inquest panchnama was drawn prior to receipt of information or registration of offence by police, which from FIR is found to be received by Yerwada Police on 22nd April 2008 at 4.25 a.m.

 Similarly, though according to the contents of report by Vikas, brother of deceased, applicants along with co-accused are named as assailants, contents of inquest panchnama which document is found recorded first in the point of time, is contrary to the contents of FIR, as, as per this document, on 21st April 2008 at around 11.30 p.m., complainant Vikas on visiting Yerwada police station had informed that his elder brother - deceased Chetan, was lying in injured condition opposite Ambedkar College and based on such information, police officials visited the spot and finding injured lying there, brought him to Sasoon hospital where at 1.20 a.m. he was declared dead on admission.

 Contents of inquest panchnama, as such, appears to be totally silent involving either of the applicants by complainant Vikas.

6 Having considered facts as aforesaid, I find much substance in the submissions advanced on behalf of applicants, of possibility of applicants' false implication in the present crime, as no reason is put forth for Vikas not naming applicants on his informing police that his brother was lying in injured condition opposite Ambedkar College.

With reference to seizure of kukri and sword involved in the present crime, which are admittedly seized from the spot and evidence of eye witnesses, they appear to have deposed about deceased Chetan having been assaulted by applicants by kukri and sword respectively. Evidence of PW10 Dr.Ajay reveals that deceased had sustained as many as seven injuries, out of which, six are abrasions on his right ring finger and right knee, while he sustained one stab injury on the chest admeasuring 5 cms, 1cm away from mid-line, cavity deep having clean cut margins. In view of evidence as aforesaid, it is therefore, contended that weapon kukri attributed to applicant no.1 Balaji, cannot cause such injury as it is single edged weapon while sword which is attributed to applicant Ganesh may cause such stab injury having clean cut margins, however he is convicted for the period of 3 years and thus, his sentence is already suspended by the learned trial court.

7 With reference to above said facts, it is also material to note that even otherwise, it is no case of prosecution that any of the weapons involved in the present crime are seized from possession of either of the applicants or at their instance, but admittedly, weapons are seized from the spot. In that view of the matter, evidence of Dr.Ajay denying the fact that for having clean cut injuries, weapon involved should have sharp edges on both its sides, cannot be given much weightage.

8 Having considering facts as aforesaid and as both the applicants were on bail pending trial and since sentence of applicant no.2 Ganesh is already suspended, both the applications are liable to be allowed as per order below :

- i) Applicant shall be released on bail on his executing PR.Bond in the sum of Rs.25,000/- with one surety in like amount.
- ii) While on bail, applicant shall mark his presence to Yerwada Police Station, once in six months, pending trial.
- iii) Applicant shall submit proof of his residence to the Investigating Officer and intimate change in address if any, in future, to the concerned police station.
- iv) Applications are allowed in above terms.

(P. N. DESHMUKH, J.)