

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1225 OF 2015

IN

CRIMINAL APPEAL NO.972 OF 2015

NAGESH UTTAM SONAWANE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

WITH

CRIMINAL APPLICATION NO.1249 OF 2015

IN

CRIMINAL APPEAL NO.982 OF 2015

BALASAHEB PRALHAD BAGWALE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri V.V.Purwant a/w. Shri Sachin Deokar, Advocate for the Applicant in Criminal Application No.1225 of 2015.

Shri Ritesh Thobde, Advocate for the Applicant in Criminal Application No.1249 of 2015.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 18th JANUARY 2016.

P.C. :

1 These two applications, though in two separate appeals, can be conveniently disposed of by this common order as the applicants in both these applications were tried and convicted on a single trial held by the Additional Sessions Judge, Solapur. The applicants have been convicted of offences punishable under Section 307 of the IPC read with Section 34 of the IPC, Section 326 of the IPC read with Section 34 of the IPC and Section 506 of the IPC read with Section 34 of the IPC. The learned Additional Sessions Judge sentenced the applicants to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.25,000/- with respect to the offences punishable under Section 307 of the IPC read with Section 34 of the IPC and Section 326 of the IPC read with Section 34 of the IPC. He sentenced the applicants to suffer Rigorous Imprisonment for 1 year with respect to the offence punishable under Section 506 of the IPC read with Section 34 of the IPC.

2 These two separate appeals filed by the applicants challenging their conviction and the sentences imposed upon them, have already been admitted. By these applications, the applicants pray that pending the hearing and final disposal of the appeals, the substantive sentences imposed upon them be suspended and they be released on bail.

3 I have heard Shri V.V.Purwant, the learned counsel for the applicant / appellant in Criminal Appeal No.972 of 2015, who was the accused no.1 before the trial court. I have heard Shri Ritesh Thobde, the learned counsel for the applicant / appellant in Criminal Appeal No.982 of 2015, who was the accused no.2 before the trial court. I have heard Shri V.B.KondeDeshmukh, the learned APP for the State. With the assistance of the learned counsel for the applicants, I have gone through the relevant evidence and the relevant parts of the impugned judgment.

4 In my opinion, a distinction has to be made in the case of these two applicants. The applicant i.e. the appellant in

Criminal Appeal no.972 of 2015 is said to be the actual assailant. According to the prosecution, both the applicants had gone to Hotel Atithi, and that, at that time, they had quarrel with the staff of the hotel over the payment of bill. In this quarrel, accused no.1 Nagesh is alleged to have assaulted one of the waiters – Arvind Yadav – by a beer bottle, causing him grievous hurt requiring hospitalization. So far as the role attributed to the accused no.2 is concerned, he is alleged to have slapped another waiter, and some witnesses have stated so. The omission to state before the police that he slapped another waiter has, however, been brought on record. The accused no.2 is also alleged to have instigated the accused no.1 to assault Arvind Yadav, and is alleged to have made some utterances indicating that he shared common intention with the accused no.1 to murder the said Arvind Yadav.

5 Shri Purwant submitted that the way the incident had taken place, the offence punishable under Section 307 of the IPC cannot be made out against the applicant.

6 Without going into the finer aspects of the matter, it may be observed that the case of the accused no.1 (i.e. the appellant in Criminal Appeal No.972 of 2015) appears to be somewhat different from that of the accused no.2 (i.e. the appellant in Criminal Appeal No.982 of 2015), and, in the circumstances, I am not inclined to suspend the sentences imposed upon the accused no.1, though I am inclined to suspend the sentences imposed upon the accused no.2.

7 However, the appeal filed by the accused no.1 needs to be expeditiously heard to decide the finer aspects of the matter. When, that the hearing of the appeal can be expedited, was expressed, Shri Purwant sought permission to withdraw the application for suspension of sentences.

8 In the result, the applications are disposed of as follows :

CRIMINAL APPLICATION NO.1225 OF 2015

1. The application is allowed to be withdrawn and stands dismissed as such.

However, the hearing of the appeal is ordered to be expedited.

2. Liberty to move the court for fixing a date for the final hearing of the appeal, after the paper book would be received.
3. Liberty to the applicant to seek suspension of sentences, in the event of the appeal not being taken up for final hearing within a period of six months from today.

CRIMINAL APPLICATION NO.1249 OF 2015

1. The application is allowed.
2. Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the applicant shall stand suspended; and the applicant shall be released on bail in the sum of Rs.30,000/- with one surety in like amount, or two sureties in the sum of Rs.15,000/- each, on the

condition that he shall report to the trial court on the first Monday of each calendar month, till the disposal of the appeal.

Should the trial court be closed on any given Monday, the applicant shall report to the trial court on the next working day.

3. Any default by the applicant in reporting to the trial court, as aforesaid, shall forthwith be brought to the notice of this court by the trial court, for further appropriate action in the matter.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**