

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1488 OF 2015

IN

CRIMINAL APPEAL NO.1115 OF 2015

1) NAJMABANU IQBAL JAHAGIRDAR)
2) IQBAL RAHMATALI JAHAGIRDAR)
3) JISHANALI IQBAL JAHAGIRDAR)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Shri Omprakash Dubey, Advocate for the Applicants.

Smt.P.P.Bhosale, APP for the Respondent - State.

Smt.Gayatri Singh a/w. Ms.Archana Rupwate, Advocate for
Respondent Nos.2 to 4.

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd FEBRUARY 2016.

P.C. :

1 The appeal filed by the applicants challenging their conviction in respect of the offence punishable under Section 307 of the IPC read with Section 34 of the IPC and the sentence of Rigorous Imprisonment for 10 years, and a fine of Rs.50,000/- imposed on each of them, has already been admitted. By the

present application, the applicants pray that pending the hearing and final disposal of the appeal, the substantive sentence imposed upon them be suspended and they be released on bail.

2 I have heard Shri Omprakash Dubey, the learned counsel for the applicants. I have heard Smt.PPBhosale, the learned APP for the State. I have heard Ms.Gayatri Singh, the learned senior advocate for respondent nos.2 to 4, who are the victims of the alleged offence.

3 With the assistance of the learned counsel, I have gone through the relevant evidence and the relevant part of the impugned judgment.

4 So far as the applicant nos.1 and 3 are concerned, I do not think it fit to suspend the substantive sentences imposed upon them. However, I am inclined to agree with the learned counsel for the applicants that the case of the applicant no.2 Iqbal Jahagirdar needs to be treated differently.

5 The alleged incident took place on 4th October 2010 and the First Information Report (FIR) came to be lodged immediately. In the FIR, the First Informant did not speak of the presence of the applicant no.2 Iqbal on the spot, at the time of the incident. There were other two injured, i.e., respondent nos.2 and 3, whose statements were also recorded, but they also did not speak about the presence of the applicant no.2 on the spot at the time of the incident. It is only in their supplementary statements which were recorded on 3rd January 2011, that the First Informant and the other two victims named the applicant no.2 as being present at the time of the incident. They attributed an active role, which was initially attributed only to the applicant nos.1 and 3, to the applicant no.2.

6 The learned counsel for the respondent nos.2, 3 and 4 submitted that the victims were in a trauma due to the attack on them, and that, therefore, they could not narrate the facts properly. I find that, nevertheless, the victims could state about the applicant nos.1 and 3. The learned counsel for the respondent

nos.2, 3 and 4 also submitted that the investigation was not being done properly, and that, the victims had to approach this court by way of a writ petition to ensure that the investigation would be done properly.

7 At this stage, that there were three eye witnesses but none of them named the applicant no.2 in their initial statement, cannot be ignored.

8 It is also submitted that the applicant no.2 has past criminal record, and that, a number of cases are pending against him. Though this appears to be true, the facts remains that so far as the present case is concerned, the substantive sentence imposed upon the applicant no.2 deserves to be suspended during the pendency of the trial. Also, it has been revealed from the report submitted by the Chief Medical Officer of the prison in which the applicant no.2 is lodged, that he is suffering from Diabetes Mellitus with Multi Drug Resistant – Tuberculosis. It is specifically stated that his health is dropping down.

9 In the result, the application is partly allowed.

10 The application, in so far as it relates to applicant nos.1 and 3, is rejected.

11 The application, in so far as it relates to applicant no.2, is allowed.

12 Pending the hearing and final disposal of the appeal, the substantive sentence imposed upon the applicant no.2 shall stand suspended and he shall be released on bail in the sum of Rs.20,000/- with one surety in like amount, on the following conditions :

- i) The applicant no.2 shall report to Bandra Police Station on every Sunday till the disposal of the appeal.
- ii) The applicant no.2 shall not contact, meet or approach the victims and their families, in any manner, whatsoever.

13 It is made clear that the Officer in-charge of the Bandra Police Station shall be empowered and competent to exempt the applicant no.2 from reporting to the Police station on any particular Sunday on satisfactory proof of the applicant no.2 being admitted into hospital, or of his being unable to report to the Police station on account of a serious health problem. Subject to this, any default committed by the applicant in reporting to the police station shall forthwith be brought to the notice of this court by the Officer in-charge of the concerned Police station for appropriate action.

(ABHAY M. THIPSAY, J.)