

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 2641 OF 2017
IN
CRIMINAL APPEAL NO. 217 OF 2017**

Sajid Pasha s/o Gulam Jilani & Ors. **..... APPLICANTS**

V E R S U S

The State of Maharashtra **..... RESPONDENT**

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Mr. N.S.Ghanekar, Advocate for Applicants.

Mr. S.Y.Mahajan, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 27th JUNE, 2017

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ORDER :

1. The applicants/appellants have moved this application seeking suspension of sentence and release on bail during pendency of Appeal for the reasons set out in detail in the application.

2. Heard learned counsel for the applicants, A.P.P. for the respondent – State and further perused record and proceedings.

3. The applicants along with 23 co-accused were tried for committing offences punishable u/ss 143,147,148,326,307,302,323,324,506 read with section 149 and 109 of the Indian Penal Code, u/s 3 (1) (x) and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989, u/s 4 read with 25 of the Indian Arms Act and u/s 37 (1) (3) punishable u/s 135 of the Bombay Police Act.

4. Out of 23 accused tried for the above stated offences, the applicants/accused Nos. 5,11,12,17,18,19 and 22 are convicted for committing offence punishable u/s 304-II, 307,326,506 read with section 149 of the Indian Penal Code. Separate sentence has been passed for each offence. Maximum sentence of Rigorous Imprisonment for 7 years and fine of Rs. 1,000/-, is awarded to each of the accused for committing offence punishable u/s 304-II read with section 149 of the Indian Penal Code. They are also convicted for the offence punishable u/s 307 read with section 149 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs. 1,000/-. The applicants/accused were acquitted for the offence punishable u/s 302 read with section 149 of the Indian

Penal Code. Being aggrieved by the impugned Judgment and order, the applicants/accused have preferred this Appeal.

5. Mr. N.S.Ghanekar, learned counsel for the applicants strenuously contended that the impugned Judgment and order of conviction is not sustainable in law. He submits that the prosecution has approached with the case that on the date of incident, deceased Devendra along with his four friends viz. Rahul Madhukar Sonsale [P.W.1], the informant; Satwaji Devrao Hanumante [P.W.2]; Shuklodhan Bhagwan Surya [P.W.3], the injured witness and Rashtrapal Devrao Hanumante [P.W.4], the injured witness, were proceeding to the hotel of Jilani for taking tea. While they were proceeding towards said hotel, applicant/accused Javedkhan [accused No. 19] got bodily touch of Shuklodhan [P.W.3]. He slapped Shuklodhan. Due to this reason, the quarrel started in between Shuklodhan and Javedkhan. Watching the quarrel going-on in between Javedkhan and Shuklodhan, mob of 20 to 25 persons gathered on the spot. Those people were carrying weapons like swords, iron rods. They rushed over deceased Devanand and his four friends and assaulted them by means of sword and iron rod. The

applicant/accused No. 19 alleged to have assaulted deceased Devanand by means of sword. The report in respect of incident lodged by Rahul Madhukar Sonsale [P.W.1]. On the basis of his report, offence punishable u/s 143,147,148,326,307,302,323,506 read with section 149 of the Indian Penal Code and u/s 4/25 of the Indian Arms Act came to be registered with police station Shivajinagar, Nanded vide Crime No. 113/2012.

In the back-ground of the complaint lodged by P.W. 1 and over-all facts of the case, learned counsel submits that the assault on Devanand as well as other injured persons was not pre-mediated. The facts of the case itself reflects that the quarrel which was initially started as petty quarrel, turn into clashes between the two groups. It is, therefore, contended that there was no intention or object on the part of accused. People gathered from both the sides assaulted each other. He submits that counter case was also registered on account of sme incident against the opposite party. It is contended that in the light of the facts and evidence on record, it can not be said that the offence was committed in furtherance of common object of alleged unlawful assembly. It is pointed out that the trial Court while acquitting accused u/s 302 of the Indian Penal Code

observed that the death of the deceased was not intended by the accused. During trial, the applicants other than applicant No. 6 [accused No. 19] Javedkhan were on bail. He further submits that applicant No. 6 is lying in jail since the date of arrest and he has spent more than 5 years as under-trial prisoner before conviction. In this back-ground, learned counsel submits that the arguable case exist in favour of applicants to be considered in Appeal and urged to suspend the sentence and release the applicants on bail during pendency of Appeal.

6. On the other hand, learned A.P.P. opposed the application with contention that the incident had occurred in furtherance of common object of assembly. He submits the fact that accused have reached on the spot armed with weapons like sword and iron rods itself demonstrates that the assault was pre-mediated and accused have acted in furtherance of common object. He supported the Judgment and order passed by the trial Court and submits that no arguable case is made out to entertain the application.

7. In order to appreciate the submissions advanced, I have perused the impugned Judgment and

order as well as copies of the depositions placed on record. As discussed, the prosecution has approached with the case that on the day of incident i.e. on 21/07/2012, deceased Devanand and his 4 friends i.e. Rahul Madhukar Sonsale [P.W.1], the informant; Satwaji Devrao Hanumante [P.W.2]; Shuklodhan Bhagwan Surya [P.W.3], and Rashtrapal Devrao Hanumante [P.W.4], the injured witness were proceeding to the hotel of Samsherbhai located nearby for taking tea. While they were proceeding towards said hotel, dashed to the body of the applicant/accused Javedkhan [accused No. 19]. On that account, applicant/accused Javedkhan slapped Shuklodhan [P.W.3]. Due to this reason, the quarrel started in between them. While they were quarreling with each other on that count, the owners of Jilani hotel i.e. accused Nos. 5,11 and 12 and one Rasul Gastelwala [not shown as accused] and 20-25 other persons came there armed with swords and iron rods and in that incident, they assaulted the deceased and other persons. The complaint in respect of the incident was lodged by Rahul Madhukar Sonsale [P.W.1]. On the basis of said complaint lodged by Rahul, offences u/s 307,143,147,148 of the Indian Penal Code and u/s 4/25 of the Indian Arms Act came to be registered vide Crime No. 113/2012. Thus, if we go by

the F.I.R., then it appears that the act was not pre-mediated. It also reflects that the incident was occurred all of a sudden. On account of petty quarrel, mob gathered and in that incident the deceased and other persons were assaulted. In this view, there appears to be force in the submissions of the learned counsel for the applicants that the assault was not pre-mediated and occurred all of a sudden. In the Judgment, learned Judge of the trial Court has observed that the death of the deceased though homicidal but not amounts to culpable homicide amounting to murder and, therefore, convicted the accused u/s 304-II of the Indian Penal Code. The deceased died in the hospital after 5 days of receiving the injuries. The injury caused to the deceased is attributed to the assault made on the part of the applicant/accused Javedkhan. It is nowhere the case of the prosecution that the deceased was assaulted by the other accused persons. On perusal of the testimony of the witnesses to the incident examined by the prosecution i.e. P.W. 1 to P.W. 4, there appears to be no consistency amongst their testimony. Their testimony found to be full of omissions and contradictions. In this view, the case is made out to entertain the application except the applicant/accused No. 6 Javedkhan. I am, therefore, inclined to pass the

following order.

ORDER

[1] Application is rejected to the extent of the applicant/accused No. 6 Javed Khan s/o Ajmalkhan Pathan [original accused no. 19].

[2] Application is allowed to the extent of applicant Nos. 1 to 5 and 7.

[3] Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by applicant Nos. 1 to 5 and 7.

[4] Applicant Nos. 1 to 5 and 7 be enlarged on bail on their furnishing bail in the sum of Rs. 50,000/- [Rupees Fifty Thousand] each with one or two sureties in like amount on following conditions.

[i] Pending disposal of the Appeal, applicant Nos. 1 to 5 and 7 shall appear and record their appearance before the Police Inspector of Shivajinagar police station, Nanded on 4th Sunday in each month in between 5.00

to 8.00 p.m.

[ii] Pending disposal of the Appeal, applicant Nos. 1 to 5 and 7 shall not leave Nanded city without intimating the Police Inspector of Shivajinagar police station, Nanded.

[iii] Applicant Nos. 1 to 5 and 7 shall not indulge into commission of similar offence.

[iv] Applicant Nos. 1 to 5 and 7 shall furnish the names and addresses of their three (3) close relatives.

[5] In case of breach of any of the conditions of bail, the bail granted to applicant Nos. 1 to 5 and 7 shall liable to be cancelled.

[6] Police Inspector of Shivajinagar police station, Nanded is directed to submit the report in respect of compliance of conditions after every six months.

[7] Bail to be furnished in the trial Court within the period of suspension as ordered by the trial Court or within one week from the date of order. Failure to furnish

bail within the stipulated period, the order of grant of bail stands cancelled. Compliance report be sent to this Court.

[V.L.ACHLIYA, J.]

KNP/Cr. Apln. 2884.2017 in Cr.A. 212.2017