

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

CRIMINAL APPLICATION NO. 3298 OF 2017
IN
CRIMINAL APPEAL NO. 273 OF 2017

1. Kisan Ganpat Lagad,
Age 74 years, Occu. Agril.,
R/o Field Land No.67, Waghjai
Mala, Aathwad Shivar,
Taluka Ahmednagar,
District Ahmednagar
2. Aashabai Bansi Lagad,
Age 47 years, Occu. Agri.,
R/o as above ..Applicants

Versus

- . The State of Maharashtra,
Through Police Inspector,
Nagar Taluka Police Station,
Ahmednagar, Dist.Ahmednagar ..Respondent

Mr V.D. Sapkal, Advocate for applicants
Mrs P.N. Patil Jadhav, A.P.P. for respondent

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

DATE : 7th September 2017

PER COURT

1. This application is filed by original accused nos.3 and 4 namely Kisan Ganpat Lagad and Aashabai Bansi Lagad, respectively with a prayer to release them on bail by suspending the sentence imposed by learned Sessions Judge, Ahmednagar on 12th June 2017 in Sessions Case No.148 of 2015.
2. Learned Counsel appearing for the applicants submits that the applicants were on bail during trial. He submits that the main role is assigned to accused nos.1 and 2 in commission of murder of Dattatraya. He invites our attention to the findings of the trial Court

recorded in paragraphs no. 16, 108 and 111 and submits that the application deserves to be allowed.

3. On the other hand, learned A.P.P. who is assisted by learned Advocate Mr Gandhi submits that the trial Court found that though the accused nos.3 and 4 i.e. present applicants have not participated in actually assaulting Dattatraya, they have shared common intention and as such, they are equally liable for commission of killing of Dattatraya. Therefore, she submits that the application may be rejected.

4. Heard learned Counsel for the applicant, learned A.P.P. for the State who is assisted by Advocate Mr Gandhi. Upon perusing the findings recorded by the trial Court, in particular in paragraphs no.16, 108 and 111 and also the statements of witnesses, it prima facie appears that the accused nos.3 and 4 i.e. present applicants have not actually participated in killing of Dattatraya. They are held responsible by invoking Section 34 of Indian Penal Code. The trial Court observed that the fatal blow, which resulted into death of Dattatraya was given by accused no.1 - Satish. During said period, accused no.2 - Bansi was holding Dattatraya. Applicant no.1 is aged 74 years and applicant no.2 is woman. Since the applicants were on bail during trial, we are inclined to allow the application.

5. In the light of above, the applicant no.1 Kisan Ganpat Lagad and applicant no.2 Aashabai Bansi Lagad be released on bail on same terms and conditions, which were imposed by the trial Court while releasing them on bail. Bail before the Sessions Court, Ahmednagar.

6. After release, the the applicants shall attend the Sessions Court, Ahmednagar once in three months and before this Court as and when their presence is directed by this Court. However, subject to deposit of fine amount if already not deposited.

7. Criminal Application stands disposed of.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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