

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.21 OF 2017

IN

CRIMINAL APPEAL NO.5 OF 2017

SAHEBRAO BIRU MOGARE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.A.B.Tajane, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 3rd FEBRUARY 2017

P.C. :

1 This is an application for suspension of sentence and releasing the applicant / accused on bail during pendency of his appeal.

2 Heard both sides and perused the impugned judgment and order of conviction apart from deposition of witnesses.

3 The applicant / accused has been convicted of offences punishable under Sections 307, 447, 504 and 506 of the IPC. For the offence punishable under Section 307 of the IPC, he is sentenced to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.1,000/-, in default, to undergo further rigorous imprisonment for 3 months. Lesser sentences are imposed for other offences and as substantive sentences are directed to run concurrently, it is not necessary to mention all those sentences.

4 Shivaji Palse and his brother Dada Palse are alleged victims of this incident. The applicant / accused is brother of deceased wife of Shivaji Palse. Pratibha is daughter of deceased's sister of the applicant / accused. On 14th March 2004, Pratibha was given in marriage, but according to the prosecution case, in the marriage ceremony of Pratibha precedence was not given to the applicant / accused Sahebrao Mogare, though he is real maternal uncle of Pratibha. Rather, brother of second wife of Shivaji Palse participated in marriage ceremony of Pratibha. This is stated to be the cause in the incident in question.

5 According to the prosecution case, on 18th March 2004, for the reason that applicant / accused Sahebrao was not permitted to participate in rituals of marriage of his niece Pratibha, accused persons including applicant / accused Sahebrao formed an unlawful assembly and attempted to kill members of prosecuting party.

6 Perusal of evidence of injured Shivaji as well as injured Dada goes to show that accused persons assaulted Shivaji but when PW6 Dada intervened, they pelted stone at him.

PW6 Dada has suffered head injury in the incident as seen from evidence of PW7 Dr. Shekhar.

7 Evidence of PW6 Dada itself shows that he was assaulted as he tried to intervene in the quarrel between the applicant / accused and brother-in-law of the applicant / accused namely Shivaji. Prima facie, therefore, it cannot be said that the applicant / accused had intended to commit murder either of Shivaji or Dada.

8 In this view of the matter and as the appeal will take its own time for final hearing, the following order :

- i) The application is allowed.
- ii) Substantive sentences imposed upon the applicant / accused is suspended and the applicant / accused is directed to be released on bail on executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) As a condition of this order, the applicant / accused should not contact members of the prosecuting party in any manner and should not indulge in commission of any offence in future.

(A. M. BADAR, J.)