

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.93 OF 2017

IN

CRIMINAL REVISION APPLICATION NO.90 OF 2017

1) SOMNATH DHONDIRAM SURVE)
2) VISHNU TANAJI SURVE)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.U.R.Mankapure, Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2017.

P.C. :

1 This is an application for suspension of sentence and releasing applicants / accused nos.2 and 3 on bail during pendency of their revision petition.

2 Applicants / accused nos.2 and 3 were convicted for the offence punishable under Section 324 of the IPC and they

came to be sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.500/-, in default, to undergo further simple imprisonment for a period of 3 months. Joint appeal filed by all three accused persons came to be dismissed, so far as present applicants / accused are concerned.

3 I have heard the learned advocate appearing for the revision petitioners / applicants. He argued that initially a non-cognizable case was registered against the accused persons, but subsequently, statement of the injured is allegedly recorded by police in the hospital which resulted in registration of the FIR. By taking me through the cross-examination of injured PW1 Pradip Surve, the learned advocate argued that his cross-examination reveals that he was in a confused state of mind at the time of lodging report which was considered as non-cognizable case. The learned advocate further argued that further cross-examination of the injured shows that he was not knowing what is recorded in the FIR written by police.

4 The learned APP opposed the application by contending that ten witnesses were examined by prosecution including the one who was injured in the incident, and therefore, the application deserves to be rejected.

5 I have carefully considered the rival submissions and also perused material made available including deposition of witnesses. PW1 Pradip Surve is the injured. As per his version, initially false information was given to him by accused no.1 Sambhaji Surve and in his subsequent meeting with accused no.1 Sambhaji Surve, he was assaulted by accused n.1 Sambhaji by an iron rod. The injured further deposed that applicant Somnath assaulted him by an iron rod whereas applicant Vishnu assaulted him by means of a stick. His cross-examination reveals that he himself had lodged the report of the incident to police, which according to the prosecution case, was considered as a non-cognizable case. However, it is seen that, his statement was recorded while he was in hospital and so far as this statement is concerned, injured PW1 Pradip Surve has stated in the cross-

examination that he has no knowledge as to what is written in his report and he is not aware as to whether it is written in his report that accused Sambhaji and Somnath assaulted him. It is seen that, the learned trial court disbelieved version of this witness, so far as accused no.1 Sambhaji is concerned, to whom main role is attributed by the injured witness. Accused no.1 Sambhaji is granted benefit of the Probation of Offenders Act by the learned appellate court.

6 *Prima facie*, it is seen that there is an element of perversity in the impugned judgment and order, and therefore, the order follows :

- i) The application is allowed.
- ii) Till disposal of the revision petition, the substantive sentence imposed upon the applicants is suspended and they are directed to be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount, by each of them.

(A. M. BADAR, J.)