

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1329 OF 2015

IN

CRIMINAL APPEAL NO.495 OF 2007

SADASHIV BIRA BARKADE

)...APPLICANT

IN THE MATTER BETWEEN

**APPASO @ DILIP HANMANT BARKADE
& ORS.**

**)
)...APPELLANTS**

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.D.D.Rananware, Advocate for the Applicant.

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

Mr.Sharad Bhosale i/b. Mr.Dilip Bodake, Advocate for the Appellant in Criminal Appeal No.495 of 2007.

CORAM : A. M. BADAR, J.

DATE : 1st MARCH 2017.

P.C. :

1 This is an application for cancellation of bail of non-applicants / appellants / accused.

2 Heard the learned advocate appearing for applicant / original informant. He argued that initially bail was granted on the consideration that there was misuse of liberty by appellants / accused. However, subsequently, appellants / accused indulged in misusing liberty granted to them by this court vide order dated 18th June 2007 in Criminal Application No.649 of 2007. For this purpose, reliance is placed on complaint dated 10th March 2015 submitted by one of the witnesses to the police station apart from N.C.R.No.130 of 2015 lodged on the basis of complaint of Sadashiv Barkade i.e. prosecution witness no.3. The report of non-cognizable case annexed at Exhibit B is to the effect that appellants / accused had assaulted the prosecuting party on 13th March 2015 and caused damaged to their house.

3 Upon being asked whether the applicant has lodged private criminal complaint, as his complaint was considered as non-cognizable by police, the learned advocate for the applicant has stated that no such steps were taken by the applicant in the matter.

4 Perusal of evidence on record reveals that on 20th May 2006 appellant / accused no.3 Kondabai along with her daughter dragged PW2 Tai Barkade out of her house and appellant / accused no.1 Appaso gave blow of an axe on head of Tai Barkade. As reflected from evidence of prosecution, appellant /accused no.2 Hanmant was instigating co-accused to murder PW2 Tai Barkade. Evidence of PW4 Dr.Ashok Tasgaonkar and that of PW6 Dr.Sunil Yadav shows that Tai Barkade has suffered incised wounds apart from depressed fracture of frontal parital bone. Ultimately, appellants / accused are convicted of the offence punishable under Section 307 read with Section 34 of the IPC, apart from other offences, by the learned Additional Sessions Judge, Satara, vide impugned judgment and order dated 5th March 2007. They are then released on bail by suspending their sentence by this court vide order dated 18th June 2007 in Criminal Application No.649 of 2007. Perusal of the said order shows that it proceeded on the terms that accused persons were on bail during trial.

5 Considering the subsequent developments as reflected from complaint dated 10th March 2015 and N.C.R.No.130 of 2015 lodged by prosecuting party, this court is of the considered opinion that instead of cancelling the bail of appellants / accused, as they are enjoying liberty for more than 10 years, interest of justice would be served by putting them to terms and therefore the order :

- i) The application is partly allowed.
- ii) The appellants / accused are directed to attend the concerned Police Station on every Sunday in between 11 a.m. and 3 p.m.
- iii) Failure to comply with this term will result in cancellation of bail granted to them by suspension of sentence, till final disposal of the appeal.

(A. M. BADAR, J.)