

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1510 OF 2016

IN

CRIMINAL APPEAL NO. 122 OF 2016

Shri. Shankar Bharat Dhumal

...Applicant

Versus

The State of Maharashtra & ors.

...Respondents

Mr. H. S. Patil i/b. Mr. P. S. Hagare for the applicant.

Mr. A. R. Kapadnis, APP for the respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20 JULY, 2017

P.C. :

1. This is an application for suspension of sentence and bail. The applicant is convicted for offences under sections 307 read with section 149 of IPC and sentenced to suffer imprisonment for six years and fine of Rs.10,000/-. The applicant is original accused no.3. The applicant was tried before the Court of Sessions Malshiras vide Sessions Case No.38 of 2008. The applicant is also convicted for offences under sections 147, 148 of IPC and sentenced to suffer imprisonment for two years. The judgment and order convicting the appellant was passed by the Additional Sessions Judge, Malshiras on

6th February, 2016. The applicant had preferred an appeal challenging the said conviction before this Court. The appeal has been admitted by order dated 3rd March, 2016.

2. The prosecution case is that the complaint was lodged on 30th June, 2016. The complainant and his brother had been to Temple. At that time, the accused came there on motor cycle. They came to Nana Asabe, brother of the complainant. They abused Nana saying that why he gave irritating gestures to gang members of accused no.1. Accused no.1 took one sword and assaulted Nana on head. Dada Tamboli, Kishor Mohite also assaulted Nana on his face, hand and head by sword. Other accused Shankar Dhumal, Sagar Mohite, Prahanth Kamble were carrying knives in their hand. They assaulted Nana by knife. Complainant intervened but he was pushed away and threatened by Sagar Mane by putting knife on his neck. Injured was taken to hospital. Accused Prashant Kamble was juvenile, his case was before Juvenile Court. During pendency of case Dada Tamboli died. Charge was framed against four accused.

3. Learned advocate for the applicant submitted that the applicant was on bail during trial and he had not misused liberty granted to him. It is submitted that the co-accused have been

granted bail by this Court, pending the appeal against conviction. The learned counsel pointed the evidence of PW-1 Kishor Asbe deposed that accused abused his brother Atul Mohite took out sword and assaulted his brother. Dada Tamboli also assaulted his brother by sword. Accused Prashant, Sagar and Shankar were possessing knife. They assaulted by knife. Sagar threatened him by knife. The learned advocate also referred to evidence of PW-2. The said witness has stated that accused Pintu Mohit took sword from his back and assaulted him on his head and face. He further stated that there was sword in the vehicle of Dada Tamboli. Dada Tamboli gave sword blow which was obstructed by the witness on his left hand. Kishor Mohite gave a sword blow on right hand. Other persons / accused started giving knife blow to him when he fell on ground. He also pointed the evidence of PW-3, Ranjit Deokar, the said witnesses had deposed that he saw the accused assaulting Nana Asabe. They were carrying weapons. He deposed that accused no.1 Atul was carrying sword and accused Dada Tamboli and Kishor Mohite were also carrying sword and other were having knife in their hand. Learned advocate for the applicant pointed the evidence of PW-4 who deposed that Pintu Mohite, Kishor Mohite and Dada Tamboli were carrying sword. Sagar Mohite and two others were carrying knife.

They were assaulting Nana. It is submitted that Sagar Mohite and Kishor Mohite are granted bail, pending appeal by this Court. He placed reliance upon the order passed in Criminal Application No.204 of 2016 wherein this Court has granted bail to Sagar Mohite vide order dated 3rd March, 2016 and also the order passed in Criminal Application No.475 of 2016 passed in the application preferred by Kishor Mohite who has been granted bail by this Court vide order dated 25th October, 2016. It is further submitted that the applicant is in custody for a 19 months. The maximum imprisonment imposed by the trial Court is of six years. It is submitted that the applicant is entitled for parity since other convicts have been granted bail by this Court.

4. Perused the evidence and the order passed by this Court granting bail to the co-accused who were convicted alongwith the applicant. The evidence of PW-1, PW-2, PW-3 and PW-4 suffers from contradiction and improvement. PW-6 has admitted that nature of injury as well as age of injury was not mentioned and the history of injury is also not mentioned in the certificate at the Exhs. 75 and 76. The panch witnesses did not support the prosecution case. This Court has suspended the sentence imposed on the co-convicted

Kishor Mohite who also convicted for similar offences. The applicant is in custody for about 19 months. It will take time to heard appeal finally. The applicant was on bail during the trial. Taking into consideration the aforesaid circumstances, the sentence imposed by the applicant can be suspended. Therefore, I pass following order;

:: ORDER ::

- (i) Criminal Application No.1510 of 2016 is allowed.
- (ii) The sentence of imprisonment imposed by the trial Court for conviction is suspended and the applicant is directed to be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only.) with one surety in the like amount.
- (iii) While on bail the applicant shall attend Akluj Police Station, Malshiras, Solapur once in a three months pending this appeal.
- (iv) Application stands disposed of.

[PRAKASH D. NAIK, J.]