

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.850 OF 2018

IN

CRIMINAL APPEAL NO.688 OF 2018

Mohan @ Aba Sambhaji Sawant & Anr. ... **Applicants**
V/s.

The State of Maharashtra ... **Respondent**

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Mr.R.A.Naik i/b. Mr.Umesh R. Mankapure, Advocate for the Applicants.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 21st JUNE 2018.

P.C. :

1 This is an application for suspension of sentence and releasing the applicants/accused on bail during pendency of the appeal filed by them.

2 The applicants/accused have been convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and they have been sentenced to suffer rigorous imprisonment for five years apart from direction to pay fine of Rs.5000/- each and in default to further undergo rigorous imprisonment for six months.

3 Heard the learned Advocate appearing for applicants/accused as well as the learned Additional Public Prosecutor appearing for the respondent/State.

4 The learned Additional Public Prosecutor opposed the application by contending that injured P.W.No.6 Swapnil had categorically deposed about assault on him by the present applicant as well as co-accused Lakhan. His version is corroborated by evidence of other witnesses as well as P.W.No.9 Dr.Vinayak Raje. Therefore, the application deserves to be rejected.

5 I have carefully considered the submissions so advanced. It is surfaced on record through evidence of prosecution witnesses that present applicant Mohan as well as his wife Usha were residing in the neighbourhood of P.W.No.6 Swapnil, who is injured witness. Evidence of the prosecution points out that P.W.No.6 Swapnil was casting evil eye on Usha – wife of present applicant Mohan. It is seen from the evidence of prosecution that present applicant Mohan was protesting about the conduct of P.W.No.6 Swapnil. Present applicant Mohan had made complaint to Police Station at Kasegaon Police Station against injured Swapnil by stating that Swapnil is making phone calls to his wife Usha in the night and harassing her sexually.

6 According to the prosecution case, applicant Mohan along with his associates assaulted P.W.No.6 Swapnil by sharp edged weapon causing injuries to him.

7 It is seen from the impugned Judgment and Order of conviction that applicant Mohan was on bail throughout the trial. It is not seen from the evidence on record that he has misused his liberty in any manner. Short sentence of imprisonment of five years has been imposed on the present applicant. The appeal filed by him may not be heard within that period. Hence, as he was on bail during trial, the liberty needs to be restored to him and therefore, the Order.

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicants/accused is suspended and they are directed to be released on bail on their executing P. R. Bond in the sum of Rs.15,000/- each and on furnishing one surety in the like amount by each of them.
- (iii) As a condition of this Order, the applicants should not contact injured Swapnil and other prosecution witnesses and he should not commit similar offence in future.

(A.M.BADAR J.)