

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.408 OF 2016

IN

CRIMINAL APPEAL NO.236 OF 2016

Umesh Gulabrao Gosavi & Anr.] ... Applicants
Versus
The State of Maharashtra.] ... Respondent

WITH

CRIMINAL APPEAL NO.236 OF 2016

Umesh Gulabrao Gosavi & Anr.] ... Appellants
Versus
The State of Maharashtra & Ors.] ... Respondents

ALONG WITH

CRIMINAL APPLICATION NO.417 OF 2016

IN

CRIMINAL APPEAL NO.241 OF 2016

WITH

CRIMINAL APPEAL NO.241 OF 2016

Shri Kiran Dattatray Pingle.] ... Applicant / Appellant
Versus
The State of Maharashtra.] ... Respondent

ALONG WITH
CRIMINAL APPEAL NO.243 OF 2016

Beena Sudhir Khicchi & Anr.	]	... Appellants
Versus		
Chandrakant Rajaram Kamble	]	
& Ors.	]	... Respondents

ALONG WITH
CRIMINAL APPEAL NO.250 OF 2016

Chandrakant Rajaram Kamble.	]	... Appellant
Versus		
The State of Maharashtra & Ors.	]	... Respondents

ALONG WITH
CRIMINAL APPEAL NO.271 OF 2016

Beena Sudhir Khicchi & Anr.	]	... Appellants
Versus		
Chandrakant Rajaram Kamble	]	
& Ors.	]	... Respondents

Mr. Rajiv Chavan, Senior Advocate i/b Mr. Vinay J. Bhanushali for Appellants in Criminal Application No.408 of 2016 and for Appellants in Criminal Appeal No.236 of 2016.

Mr. Jahangir Khojatia i/b Mr. Anil Galgali for Appellant in Criminal Application No.417 of 2016 and for Appellant in Criminal Appeal No.241 of 2016.

Mr. Chetan Mali for Appellants in Criminal Appeal No.243 of 2016 and Criminal Appeal No.271 of 2016.

Mr. J. P. Yagnik, APP for State – Respondent.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE :- 25 JUNE, 2018

P. C. :-

1. These are Applications for suspension of sentence and grant of bail during the pendency of the Appeal.
2. Mr. J. P. Yagnik, learned APP for State, vehemently opposed the Applications.
3. The Applicants were the Police Constables who have been convicted for the offences punishable under Sections 304 (Part-II), 330 and 323 read with 34 of the IPC. The maximum sentence that is awarded for Section 304 (Part-II) of the IPC is 7 years R.I. along with fine of Rs.10,000/-.
4. This is a first time that the Applications are being considered on merits.
5. According to the prosecution story, the incident has taken place in three phases.

6. In the first phase when the accused nos.3 and 4 came to know that a person was found with suspicious circumstance in NESCO Exhibition Ground, the accused nos.3 and 4 had apprehended the deceased. He gave a jerk and started running. While running, he dashed against a wall and fell down. The mob which was present in the ground, started assaulting him. They were separated by a security guard and handed over to police.

7. Thereafter, the deceased, along with another suspect i.e. PW 38, was brought in a police van to the police station. It is also alleged that during that period also, the deceased was assaulted.

8. In the third phase, after bringing him to the police station, he was taken in detection room and it is alleged that while interrogating, he was again assaulted by the accused nos.1 and 2.

9. It could, thus, be seen that accepting the evidence of the prosecution witnesses as it is, the role attributed to the accused nos.3 and 4 would be of assaulting the deceased when he was brought in a police van to the police station; whereas the role attributed to the

accused no.2 would be of assaulting when the deceased was in the detection room.

10. The State has not preferred Appeal against acquittal. *Prima facie*, we are of the view that even after taking the evidence of the prosecution at its face-value, the conviction, at the most, would be under Part-II of Section 304 of the IPC. For the same, the learned trial Judge has convicted them for 7 years. Out of 7 years, the Applicants have already undergone 4 years and 6 months. As such, almost more than 60% sentence has already been undergone.

11. Taking into consideration the huge pendency of the Appeals wherein the accused are in custody for a period of 10 years or more, it is not probable that the Appeal would be heard in near future.

12. In that view of the matter, we are inclined to allow the Appeal. Hence, the order.

ORDER

- (i) The Applications are allowed.
- (ii) The order of sentence is suspended.

- (iii) The Applicants / accused nos.2, 3 and 4 be released on bail on furnishing bail bonds in the sum of Rs.10,000/- each with one or two sureties each in the like amount.
- (iv) The Applicants shall report to the Investigating Officer once every month.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)