

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1113 OF 2018

IN

CRIMINAL APPEAL NO.318 OF 2017

Santosh Jaywant Jadhav.] Applicant /
Orig.Accd.No.1.
Versus

The State of Maharashtra.] ... Respondent

Mr. Ganesh Gole a/w Mr. Ateet Shirodkar for Applicant.
Mr. J. P. Yagnik, APP for State.

**CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.**
DATE :- 14 AUGUST, 2018

P. C. :-

1. This is an application for suspension of sentence and grant of bail during pendency of the Appeal.

2. The Applicant / accused no.1 was convicted for commission of an offence punishable under Sections 302, 341 and 324 read with 149 of the IPC as well as under Sections 143, 147 and 148 of the IPC and was sentenced to suffer imprisonment for life. Previously, he had preferred application for bail but it was pressed only on the medical grounds. The present application is preferred on merits.

3. The prosecution case is that a girl namely Vaishali, from the family of the accused was to be married to one Balkrishna who was belonging to the complainant's group. However, the marriage could not be arranged and therefore, there was enmity between the two families. It is the case of the prosecution that on 05/05/2014 at about 11.00 p.m., PW 1 Sachin and his brother Sunil were proceeding towards their house, when they reached near the house of the accused no.1, at that time, all the accused, including the present Applicant, obstructed them and assaulted them with weapons like sword, sickle, wooden rod and stick. In the assault, one Kedu Hirey suffered severe injury to his head and he succumbed to his injuries. Therefore, offence was registered under Sections 302 read with 149 of the IPC.

4. We have perused the evidence of the eye witnesses. At this stage, it is not necessary to consider their evidence in detail. However, the evidence of all the eye witnesses shows that though they claimed that all the accused assaulted them with deadly weapons, the injuries suffered by them which are proved through medical evidence on record, are very minor. Even the injury suffered by the deceased was attributed to the assault by sword. However, the injury mentioned by the doctor who had conducted post-mortem, showed that there was one CLW on occipital

region which was the cause of death. Therefore, there is apparent discrepancy between the ocular evidence and the medical evidence. In the background of the fact that there was previous enmity between the two groups, the possibility of false implication cannot be ruled out. The accused no.3 was acquitted and his contention of *alibi* was accepted by the trial Court. That means at least one accused was falsely implicated by the prosecution witnesses. Therefore, false implication of the other accused is not ruled out. It may also be noted that the present Applicant is suffering from HIV and has undergone hip replacement surgery. In this view of the matter, we are inclined to allow the application. Hence, the order.

ORDER

- (i) Application is allowed.
- (ii) The sentence awarded to the Applicant is suspended till final disposal of the present Appeal.
- (iii) The Applicant be released on bail, on his furnishing P.R. bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)