

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

**CRIMINAL APPLICATION NO.243 OF 2019
IN
CRIMINAL APPEAL NO.254 OF 2019**

1 Abdul Raheman Riyaz Ahmed

2. Ayyai Ahmed Riyaz Ahmed Applicants

Vs.

1. The State of Maharashtra

2. Mohd. Ibrahim Md. Saban Respondents

Mr. N.R. Bubna for the Applicants.

Mr. S.R. Agarkar, APP for State.

Mr. S.B. Navale, PSI, Malegaon City Police Station, Nashik Gramin

Coram : Smt. Sadhana S. Jadhav, J.

Date : 3rd April 2019

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal Procedure seeking suspension of substantive sentence imposed upon the applicants by the Additional Sessions Judge-2, Malegaon vide

judgment and order dated 23rd January 2019. The applicants herein are convicted for the offence punishable under Section 307 read with 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of five years and pay a fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for four months.

3 The applicants before this Court are original accused nos. 2 and 3. The injured-complainant is PW-2, Mohd. Ibrahim Mohd. Saban, who has stated that in front of Firoz Fitter Garage, original accused no.1, Sajid had assaulted him with sharp edged weapon. When he was trying to obstruct said assault, he sustained injury to his palm on the left hand. He had sustained injury on his left cheek and neck. According to him, the present applicants had caught hold of him and also assaulted him with sharp edged weapon. He had sustained injury on his left elbow and on left abdomen. In the cross-examination, it is admitted that the present applicants had caught hold of him from the rear side in order to facilitate the original accused no.1 to mount assault upon him.

4 Upon perusal of the evidence of the Medical Officer, it appears that the original accused no.1 was the author of injury no.1. The injury nos. 2 and 3 were sustained by the injured when he was trying to obstruct the assault by original accused no.1 and there is also grievous injury on his left abdomen. Most of the injuries are caused by a chopper, which was possessed by original accused no.1. It appears that there is an animosity between the accused and the injured. The applicants were on bail during the pendency of the trial and have not committed breach of any conditions imposed upon them. In view of this, the applicants deserve same relief during the pendency of the appeal on imposing certain stringent conditions. Hence, the following order :

ORDER

- i) The application is allowed and disposed of.
- ii) The substantive sentence imposed upon the applicants vide judgment and order dated 23rd January 2019 is hereby suspended.
- iii) The applicants be enlarged on bail on furnishing P.R. bonds in the sum of Rs.30,000/- each with one or more solvent sureties in the like amount.

- iv) The applicants shall not reside within the jurisdiction of Ayeshanagar Police Station, Malegaon for a period of six months.

- v) Upon being enlarged on bail, the applicants shall cause their presence before the Sessions Judge, Malegon once in six months on the date assigned by the Sessions Judge.

- vi) Upon failure to attend any two consecutive dates, the Sessions Court shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(Smt. Sadhana S. Jadhav, J)