

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

**CRIMINAL APPLICATION NO. 338 OF 2019
IN
CRIMINAL APPEAL NO. 364 OF 2019**

Ajay Rajaram Bhandare. ..Applicant.
V/s.
The State of Maharashtra. ..Respondent.

WITH

**CRIMINAL APPLICATION NO. 289 OF 2019
IN
CRIMINAL APPEAL NO. 311 OF 2019**

Sanjay Rajaram Bhandare. ..Applicant.
V/s.
The State of Maharashtra. ..Respondent.

Mr. Murtuza Najmi a/w. Mr. Vikas Kumbhar a/w. Ms. Nirmala Bhosale
I/b. Mr. P.V. Nichani, advocate for applicant in APPA 338/19.

Mr. Satyvratt Joshi a.w. Mr. Nitesh Mohite, advocate for applicant in APPA
289/19.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 28, 2019.

P. C. :

1 Heard the learned Counsel for the applicants and the learned

Talwalkar

APP for State.

2 These are applications under section 389 of the Code of Criminal Procedure, 1973. The applicants herein are seeking suspension of substantive sentence imposed upon applicants by Sessions Judge, Solapur in Sessions Case No. 230 of 2013 vide Judgment and Order dated 8/2/2019, thereby convicting the applicants for the offence punishable under section 307 read with section 34 of the Indian Penal Code and sentenced them to suffer R.I. for 5 years and to pay fine of Rs. 10,000/- I.d. to suffer R.I. for 3 months.

3 It is the case of the prosecution that complainant Ajay has purchased a property from Smt. Bhagirathi Ghavale. At the time of execution of sale deed itself, it was informed to the complainant that the present applicants are residing as tenant in the suit property and 3 rooms were in their occupation. It was responsibility of the complainant to get the rooms vacated. The complainant had filed a complaint against the family members of the applicants to Municipal Corporation alleging therein that they were running a mess illegally without holding licence under Shop Act. Similarly wife of the applicant had also filed FIR against the complainant for offence punishable under section 354 of the Indian Penal Code.

Talwalkar

4 It is the case of the prosecution that on 10/8/2012 at about 7 a.m. when the complainant had been to his property, present applicants had assaulted him with cricket bat, thereby causing fracture to his leg. He was admitted in Ashwini Hospital. Injuries to his head were sutured and operation was performed on his leg. It is pertinent to note that at the time of admission in the hospital, history as alleged was assault by unknown person.

5 The learned Sessions Judge while considering the evidence of Dr. Milind Joshi had observed that injury certificate produced by the prosecution at the trial was a photo copy and was a document which appeared more than 6 years old. The respective Counsel for the applicants submit that the said injury certificate is not pertaining to the present incident or it is a tampered document.

6 The applicant in Criminal Application NO. 289 of 2019 was granted Anticipatory bail after the registration of FIR and remained on anticipatory bail during the trial and has not committed any breach of any condition. Similarly, the applicant in Criminal Application No. 338 of 2019 was in custody for about 25 days and thereafter, was granted bail.

7 The learned Counsel for the applicants submits that the

applicants have not committed any breach of condition during the pendency of the trial and therefore, they are entitled to the extension of the same relief during the pendency of the trial.

8 In any case, the sentence imposed upon the applicant is a short term sentence. At present this Court is hearing the criminal appeals of the year 2011 and 2013 and hence, there is no likelihood that the matter would be taken up for final hearing in the near future and hence, the applicants deserve bail during the pendency of the appeal. Hence, following order is passed :

ORDER

- (i) The applications are allowed.

- (ii) The substantive sentence imposed upon the applicants vide Judgment and Order dated 8th February, 2019 by Addl. Sessions Judge, Solapur in Sessions Case No. 230 of 2013 is hereby suspended. The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 30,000/- each and one or more solvent sureties in the like amount.

- (iii) The applicant shall mark his presence before the learned Sessions Court, Solapur once in 6 months on the date assigned by the learned Sessions Court, Solapur. Upon failure to attend two consecutive

Talwalkar

dates, the Sessions Court shall report to the High Court and the prosecution would be at liberty to seek cancellation of bail.

9 The applications are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]