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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 989 OF 2019
IN
CRIMINAL APPEAL NO. 460 OF 2019

- 1] Mayur Dilip Bhelke.
- 2] Samir Gulab Kiwale.
- 3] Adarsh Chandrakant Sagle.
- 4] Shairf Hanif Atar.
- 5] Shrikant Shantaram Sanas.
- 6] Aniket Sampat More. ..Applicants.

Versus

State of Maharashtra. ..Respondent.

Mr. A. P. Mundargi, Senior Advocate with Mr. Sabir Sarkar for the Applicants.

Mr. A. Sait, APP for the Respondent-State.

Coram : RANJIT MORE &
SURENDRA P. TAVADE, JJ.

Date : **December 16, 2019.**

P. C. :

1. Heard Mr. Mundargi, the learned senior counsel appearing on behalf of the Applicants and Mr. Saith, the learned APP for the Respondent-State.

2. The Applicants are original accused nos.6 to 11 in Sessions Case No.598 of 2012 tried before the Court of Additional Sessions Judge, Pune at Pune. The present applicants along with four other accused (accused nos.1 to 4) have been found guilty by the trial Court for the commission of offence punishable under

sections 302 as well as some other sections of IPC and sentenced to suffer life imprisonment.

3. The appeal filed against the judgment and order of conviction has already been admitted and the present application is taken out for grant of bail.

4. The prosecution case, in short, is that Bajirao and his brother-Maruti Pangse had dispute on account of agricultural land with his paternal aunt. There were quarrels between the two from time to time. On 5th May 2012, the paternal aunt, her brother and her two children along with some unknown persons assaulted Bajirao and Maruti with wooden sticks and in the said assault, Bajirao and Maruti died on the spot.

5. In order to prove the charges against accused, the prosecution mainly relied upon the evidence of three witnesses, namely, [1] Anita Bajirao Pangse (PW-1) wife of the deceased - Bajirao, [2] Sampat Kondiba Washinkar (PW-2) and [3] Sadashiv Krishna Chive (PW-3). With the assistance of learned senior counsel appearing on behalf of the Applicants, we have gone through the depositions of these witnesses. In cross-examination, PW-1 has referred the names of accused nos.1 to 4 only as the assailants and there is no reference about the

present applicants (accused nos.6 to 11). At the end of examination in chief, a question was put to PW-1 whether she wants to say anything about other accused present in the Court on that day. Mr. Mundargi, learned senior counsel submitted that such question could not have been permitted to be put in examination in chief. We find some merit in the submission.

6. So far as PW-2 is concerned, he has admitted that the present applicants were shown to him by police before the test identification parade. PW-3 is the panch-witness to the panchanama of blood stained clothes of the accused which was effected on 8th May 2012 as well as panch-witness to the recovery of weapon from accused no.1. The blood stained clothes were seized on 8th May 2012 and recovery was shown to have been effected on 21st May 2019. However, the statement of PW-3 was for the first time recorded on 22nd May 2012.

7. That apart, the FIR is filed on the date of incident, i.e., 8th May 2012. The charge-sheet was filed on 4th August 2012. The test identification parade was, however, conducted on 23rd August 2012, i.e., much after the filing of the charge sheet.

8. Taking into consideration above circumstances, coupled with the fact that the Applicants were on bail during trial,

we are inclined to suspend the sentences imposed on them and release them on bail. We accordingly dispose of this application by passing following order.

-: O R D E R :-

- (a) The sentences imposed on the Applicants vide the impugned judgment and order in Sessions Case No. 598 of 2012 by the Additional Sessions Judge, Pune at Pune are hereby suspended.
- (b) The Applicants be released on bail on their furnishing PR bonds of Rs.25,000/- each with one or more sureties in the like amount to the satisfaction of the trial Court.
- (c) The Applicants shall give address and contact details at which place they shall always be available during the pendency of appeal.
- (d) Similar details in relation to the sureties shall also be submitted.
- (e) The Applicants shall not in any way directly or indirectly attempt to contact or pressurise either complainant or any of the witnesses.
- (f) The Applicants shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and they shall not be entitled to any fresh notice at the stage of final hearing.
- (g) The Applicants shall report to the Superintendent / Registrar of District and Sessions Court, Pune on first working Monday of every two months.

- (h) The Applicant's failure to observe any of the terms and conditions of this order shall entitle the Respondent-State to take him in custody.

[SURENDRA P TAVADE, J.]

[RANJIT MORE, J.]