

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

**CRIMINAL APPLICATION NO.2031 OF 2018
IN
CRIMINAL APPEAL NO.1501 OF 2018**

Nizamuddin Abdul Rehman Siddiqui Applicant
Vs.
The State of Maharashtra Respondent

**ALONGWITH
CRIMINAL APPLICATION NO.1991 OF 2018
IN
CRIMINAL APPEAL NO.1480 OF 2018**

Faizal Ansar Siddique & Ors. Applicants
Vs.
The State of Maharashtra Respondent

Mr. Subhash Jha a/w Mr. Hare Krishna Mishra I/by Law Global
Advocates for the applicant in APPA No. 2031 of 2018.

Mr. Chandrakant K. Talekar for the applicant in APPA No. 1991 of
2018.

Mr. S.H. Yadav, APP for State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 10th January 2019

P.C.:

1 Heard the respective counsel.

2 These are the applications under Section 389 Code of Criminal Procedure. The applicants herein are convicted by the Ad-hoc District Judge-3, and Additional Sessions Judge, Thane vide judgment and order dated 13th November 2018, for the offences punishable under Sections 367, 326, 323, 504 read with Section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for five years, five years, one year and one year and to pay a fine of Rs.1,000/- each, in default to pay a fine to suffer simple imprisonment for one month each respectively and substantive sentences shall run concurrently.

3 It is the case of the prosecution that on 8th July 2016, one Mohammed Shahid Mukim Ansari was assaulted brutally by the present applicant Nizamuddin (the appellant in Criminal Appeal No. 1501 of 2018) by iron rod after he was abducted. He had sustained multiple compound fractures and was therefore admitted in Sir J.J. Hospital on 9th July 2016 at about 12.40 am. with alleged history of assault with blunt object at 9.30 pm. on 8th July 2016. His statement

was recorded in Sir JJ Group of Hospitals by PSI of Shantinagar Police Station, Bhiwandi. According to him, the present applicants had initially called him to meet the Deputy Mayor of Bhiwandi Municipal Corporation, he had denied. Thereafter when he was at Khandupada, he was picked up by the present applicants and were taken to Avchitpada and there the accused Nizamuddin Siddhiqui had assaulted him with iron rod on both legs and the other accused had assaulted him with fist and kicks blows.

4 On 9th July 2016, the original accused no. 1 Faizal lodged a report at the police station alleging therein that he was assaulted by Shahid Ansari, Atik Ansari and Shakil Ansari on 8th January 2016 at about 10.00 pm. He had also lodged a report at Shantinagar police station. On the basis of his report, Crime No. 201 of 2016 was registered against the accused persons for the offences punishable under Sections 324 and 504 read with 34 of Indian Penal Code.

5 Learned counsel for the applicant, Mr. Jha submits that this is a case of cross-complaints and it was incumbent upon the prosecution to prove the injuries sustained by Faizal Siddhiqui i.e. the original accused no.1. It is, in these circumstances, learned counsel for the applicants seeks enlargement on bail. As against this, the learned APP submits that during the trial the accused in Sessions Case No. 348 of 2016 had not brought it to the notice of the Sessions Court that there is a cross complaint. Neither any questions were put to the witnesses in the cross-examination about the injuries sustained by Faizal Siddhiqui in the course of the same incident. Moreover, although the information is received at the police station later on, Crime no. 201 of 2016 appears to be ante-timed and therefore the said submission shall not inspire confidence of the Court. In the present case, the injury certificate of PW-10, Mohammed Shahid Ansari has been admitted by the defence under Section 294 of Code of Criminal Procedure and therefore the prosecution has not examined Dr. Mustakir, who had examined the patient and issued the certificate.

6 Learned APP submits that the injured was admitted in the hospital for about two months since he had sustained multiple compound fractures and therefore the applicants do not deserve to be enlarged on bail. The sentence imposed upon the applicants is a short term sentence in as much as they are sentenced to rigorous imprisonment for a period of five years. Learned counsel, Mr. Talekar and Mr. Jha submit that the present applicants have been in custody since 13th July 2016 i.e. practically for more than 2½ years.

7 At present this Court is hearing the criminal appeals of the years 2013, 2014 and there is no possibility of the appeals being heard in the near future. It is also submitted that the challenge to the sentence would become infructuous in the eventuality that the appeal is not heard at the earliest. It is, in these circumstances that the substantive sentence imposed upon the applicants deserve to be suspended and they deserve to be enlarged on bail. Hence, the following order.

ORDER

- i) The application is allowed and stands disposed of.
- ii) The substantive sentence imposed upon the applicants by the learned Ad-hoc District Judge-3, and Additional Sessions Judge, Thane vide judgment and order dated 13th November 2018 is hereby suspended.
- iii) The applicants be enlarged on bail on furnishing P.R. bonds in the sum of Rs.50,000/- each with one or more solvent sureties in the like amount.
- iv) The applicants shall not reside within the limits of Bhiwandi Municipal Corporation till 30th March 2019.
- v) The applicants shall mark their presence before the Sessions Court at Thane 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 report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(*Smt. Sadhana S. Jadhav, J*)