

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1283 OF 2020
IN CRIMINAL APPEAL/418/2020
WITH CRIMINAL APPEAL/528/2020
WITH CRIMINAL APPEAL/418/2020
WITH CRIMINAL APPLICATION/1283/2020
IN CRIMINAL APPEAL/418/2020
WITH CRIMINAL APPEAL/420/2020
WITH CRIMINAL APPLICATION/1284/2020
IN CRIMINAL APPEAL/420/2020
WITH CRIMINAL APPEAL/421/2020
WITH CRIMINAL APPLICATION/1285/2020
IN CRIMINAL APPEAL/421/2020
WITH CRIMINAL APPEAL/422/2020
WITH CRIMINAL APPLICATION/1286/2020
IN CRIMINAL APPEAL/422/2020
WITH CRIMINAL APPLICATION/1286/2020
IN CRIMINAL APPEAL/422/2020
WITH CRIMINAL APPLICATION/1284/2020
IN CRIMINAL APPEAL/420/2020
WITH CRIMINAL APPLICATION/1285/2020
IN CRIMINAL APPEAL/421/2020
AND
CRIMINAL APPLICATION (ALS) (ST) 1797 OF 2020
WITH CRIMINAL APPEAL NO.528 OF 2020

DIPAK HIMMATRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA

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In Criminal Application No.1283 of 2020, Criminal Appeal No.418 of 2020, Criminal Application No.1284 of 2020, Criminal Appeal No.420 of 202, Criminal Application No.1285 of 2020, Criminal appeal No.421 of 2020, Criminal Application No.1286 of 2020, Criminal Appeal No.422 of 2020

and Criminal Appeal No.409 of 2020:-

Advocate for Applicants / Appellants :

S/Shri G.A.Nagori, Y.H.Jadhav, R.S.Pawar, D.M.Shinde
and A.S.Sawant,

APP for Respondents: Shri S.D.Ghayal

Advocate for Respondent 2 : S/Shri B.R.Warma and M.G.Kochar

AND

In Criminal Application (ALS) (St) No.1797 of 2020
and Criminal Appeal No.528 of 2020 -

APP for Applicants / Appellants - State : Shri S.D.Ghayal

Advocate for Respondents 1 to 3 : Shri A.S.Sawant
Advocate for Respondents 4 to 8 : Shri D.M.Shinde
Advocate for Respondents 9 to 11 & 14 : Shri R.S.Pawar
Advocate for Respondents 12 & 13 : Shri Satej S.Jadhav
Advocate for Respondent 15 : Shri G.A.Nagori

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CORAM : RAVINDRA V. GHUGE & B. U. DEBADWAR, JJ.

Dated: October 14, 2020

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PER COURT :-

1. All these applicants are before the Court in view of their conviction by judgment dated 6.7.2020, delivered by the learned Additional Sessions Judge, Amalner in Sessions Case No.25 of 2018. The applicants pray for suspension of sentence and for bail during the pendency of their appeals filed against their conviction.

2. The operative part of the order of conviction reads as under:-

“(a) Accused Nos.1) Harishchandra Madhavrao Patil, 2) Yogesh Madhavrao Patil, 8) Sharad Vishwas Patil, 14) Dipak alias Shashikant Adhikrao Patil and 15) Dipak Himmatrao Patil are hereby convicted for the offences punishable under Sections 143, 147, 148 of Indian Penal Code, vide Section 235(2) of Code of Criminal Procedure and sentenced under Section 148 of Indian Penal Code to suffer simple imprisonment for one year each.

(b) Accused Nos.1) Harishchandra Madhavrao Patil, 2) Yogesh Madhavrao Patil, 8) Sharad Vishwas Patil, 14) Dipak

alias Shashikant Adhikrao Patil and 15) Dipak Himmatrao Patil are hereby convicted for the offences punishable under Section 307 read with Section 149 of Indian Penal Code, vide Section 235(2) of Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for five years and to pay a fine of ₹5,000 each in default of payment of fine amount, to suffer simple imprisonment for further six months each.

(c) Accused Nos.1) Harishchandra Madhavrao Patil, 2) Yogesh Madhavrao Patil, 8) Sharad Vishwas Patil, 14) Dipak alias Shashikant Adhikrao Patil and 15) Dipak Himmatrao Patil are hereby convicted for the offences punishable under Section 326 read with Section 149 of Indian Penal Code, vide Section 235(2) of Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for five years and to pay a fine of ₹5,000 each in default of payment of fine amount, to suffer simple imprisonment for further six months each.

(d) On depositing fine amount by the accused, ₹30,000 (rupees thirty thousand only) be given to the informant Jitendra Gulabrao Patil (PW-1) as compensation, after expiry of appeal period.

(e) Accused Nos.1) Harishchandra Madhavrao Patil, 2) Yogesh Madhavrao alias Shashikant Adhikrao Patil and 8) Sharad Vishwas Patil, 14) Dipak alias Shashikant Adhikrao Patil and 15) Dipak Himmatrao Patil are acquitted of the offences punishable under Sections 395, 354, 506, 504 read with Section 149 of Indian Penal Code, vide section

235(1) of Code of Criminal Procedure.

(f) Accused Nos.3) Madhavrao Ganpat Patil, 4) Dhanraj Fakira Patil, 5) Gajanan alias Harishchandra Dhanraj Patil, 6) Gorakh Dhanraj Patil, 7) Vishwas Fakira Patil, 9) Baba alias Vinod Vishwas Patil, 10) Sunil Gulabrao Patil, 11) Gulab Fakira Patil, 12) Dhanraj Gaindhal Patil and 13) Kanhaiyalal Gaindhal Patil are acquitted of the offences punishable under Sections 143, 147, 148, 307, 326, 395, 354, 506, 504 read with Section 149 of Indian Penal Code, vide section 235(1) of Code of Criminal Procedure.

(g) The substantive sentences shall run concurrently.

(h) Set off be given to the convicted accused, for the period, if any, undergone by them, in jail, vide section 428 of Code of Criminal Procedure.

(i) The convicted accused persons to surrender to their bail bonds.

(j) The acquitted accused persons to comply with the provision of Sec.437A of Code of Criminal Procedure.

(k) Seized property i.e. MLC register be returned to the Chief Medical Officer, Cottage Hospital, Parola, Tal. Parola, District Jalgaon, after expiry of appeal period.

(l) Seized property i.e. soil samples, informant's clothes, two wooden sticks, being worthless be destroyed after expiry of appeal period.

(m) Copy of the judgment be supplied to the convicted accused, free of costs, immediately as per Section 363(1) of the Code of Criminal Procedure.”

3. The State has also preferred an application for seeking leave to file an appeal for assailing the acquittal of ten persons, for assailing the acquittal of the convicted persons under particular charges and for enhancement of sentence with regard to the five convicted persons.

4. The learned Advocate appearing on behalf of the applicants have advanced extensive submissions and have practically read out the testimonies of the witnesses, threadbare. The learned APP has opposed these applications. With the assistance of the counsel, we have gone through the record available.

5. The applicants before us, seeking suspension of sentence and bail, are as under:-

Accused No.1 - Harishchandra Madhavrao Patil -

(Police Sub Inspector- in-service),

Accused No.2 - Yogesh Madhavrao Patil,

Accused No.8 - Sharad Vishwas Patil,

Accused No.14 - Dipak @ Shashikant Adhikrao Patil and

Accused No.15 - Dipak Himmatrao Patil.

6. The prosecution has succeeded in acquiring conviction for the above accused persons, under the following factors of the case:-

(a) On 30/01/2018 at about 10.00 p.m. the informant Jitendra was proceeding on his motorcycle towards his house.

(b) On his way near Lahan Maruti temple (small temple), the accused persons were present.

(c) The accused No.1, intercepted the informant's motorcycle and gave a blow with an axe on the informant's forehead. The informant fell down from his motorcycle with a bleeding injury.

(d) Thereafter, rest of the accused encircled him and questioned him as to why he had lodged a complaint with the police against them.

(e) They gave him blows with sticks on his hands, legs, back and abdomen.

(f) After raised cries, few villagers, his wife and mother came running.

(g) The informant's wife lay herself over her husband to shield him and begged the accused persons not to beat him.

(h) One of the accused called her 'रांड' (prostitute) and asked her to touch his feet, another accused pulled her by

holding her hand. They beat her as well.

(i) After a few minutes, the accused persons fled away.

(j) Before they left, they stole valuables from the informant's person such as a gold ring, gold bracelet and a wrist watch. They also stole cash ₹50,000 from his pocket.

(k) The informant was attacked because he had filed various proceedings in courts against the accused persons.

(l) The informant had sustained multiple injuries, some of them turned out to be fractures.

(m) The Informant was taken to Parola Police Station, Cottage Hospital, then to Parola Rural Hospital and then referred to Seva Hospital, Dhule where he was operated for his injuries.

(n) The accused No.1 is a serving sub inspector of Police. He was arrested on 05/06/2018. Accused Nos. 4, 6, 7, 10, 12 to 14 were arrested during the course of investigation and they were released on bail. Some of the accused were released on anticipatory bail.

(o) Bail applications of accused No.1 were rejected by the Sessions Court as well as this Court.

(p) Accused No.1 had preferred the bail application before

the Hon'ble Supreme Court, which was withdrawn subsequently.

(q) Since the date of arrest, accused No.1 is behind the bars.

(r) The Charge - sheet came to be filed in the Court of the learned J.M.F.C., Parola and registered as R.C.C. No. 37/2018. As sections 395 and 307 are exclusively triable by the Court of Sessions, the learned Magistrate committed the case for trial before this Court.

(s) Charge Exh.68 was framed. It was read over and explained to the accused. They pleaded not guilty and claimed to be tried.

(t) Their defence is of total denial and false implication due to previous enmity and village politics.

(u) According to them, it was Jitendra and five others who committed dacoity in the same night at about 10:30 p.m. at the house of accused No.1. Those persons broke open the door of the house and forced an entry. They were armed with sticks. They injured accused No.1 Harishchandra and accused No.12 Dhanraj. They took away ₹34,000 from Harishchandra. Those persons also took away with them a bag containing various complaints which were made by accused Madhavrao against informant Jitendra.

(v) On the report of accused No.1 dated 31/01/2018, Crime No.21/2018 came to be registered for

the offences punishable under sections 395, 324, 427, 452, 504, 506 read with Section 149 of the Indian Penal Code. As a subterfuge to the report lodged by accused No.1 against the informant and others, this false case is registered against the accused. This C.R.No. 21/2018 is a counter case bearing Sessions Case No. 15/2019. It was tried simultaneously with this case.

7. The learned Advocates for the applicants have strenuously contended that accused No.1 Harischandra has been in jail since 5.6.2018 and the rest of the above mentioned convicts had succeeded in getting anticipatory bail, except accused No.14, who was granted regular bail. It is, therefore submitted, in so far as Harishchandra is concerned that as he has completed two years and four months in jail, he should be released on bail by suspending his sentence. Reliance is placed on the judgment of the Honourable Apex Court in the matter of Bhimsingh Vs. Union of India and others [(2015) 13 SCC 605]. With regard to the other convicts, who were on bail during trial, it is submitted that they are behind bars in view of the impugned judgment, for the last about three months. They have not violated any bail condition and have behaved well throughout as law abiding citizens. When they were released on bail during trial, there should be no impediment for granting them bail. They assure compliance of all bail conditions as may be imposed upon them by this Court and would not commit any such act, which would amount

to an offence, till the appeals are decided.

8. Besides the above, the learned Advocates representing the applicants/convicts, have relied upon the testimonies of the prosecution and defense witnesses, recorded before the trial Court. While referring to the testimony of PW 1 Jitendra - Eye Witness, it is submitted that the axe by which Harishchandra allegedly hit Jitendra, was never recovered by the police. The weapon alleged to have been used in the commission of the crime has not been traced out and the case of the prosecution would collapse in view of this factor.

9. It is then submitted that in the medical record at the Cottage Hospital, Parola, District Jalgaon, the case was initially registered as a road accident. However, due to political pressure, it was subsequently, converted into a case of assault at the hands of the accused persons. A lacerated wound over the central part of the forehead ad-measuring 6 cms. in length and 2 cms. in depth was said to have been caused on account of a heavy blunt weapon. PW 1 has actually suffered a road accident as his motor-cycle had slipped and he had fallen on the road, due to which, there was a lacerated wound.

10. The learned Advocates further submit that the medical case papers of the Parola Rural Hospital would indicate the same

description of the wound and as such, the case of assault was ruled out. It is canvassed that the informant approached the Seva Superspeciality Hospital, Dhule and it was he who chose to avail of treatment at a private hospital. Therefore, the deposition of PW 12 Dr. Shrikant Nagorao Brahmane will have to be discarded. His description of the injuries as being an incise wound on the right frontal scalp with 4 cms. in length, 2 cms. width and 1 cm. deep is against the medical record of the Cottage Hospital and the Rural Hospital.

11. The learned Advocates then submitted that PW 1 Jitendra had submitted a supplementary statement on 15.3.2018, which is after about 45 days from the date of the incident. PW 4 Chhayabai w/o Jitendra Patil had recorded her statement on 5.2.2018, which is after five days of the incident. Similarly, the statement of PW 2 Madhukar Shivaji Patil was recorded on 5.2.2018. PW 2 and PW 4 are purportedly eye-witnesses along with PW 1 and the possibility of tutoring them in order to make a corroborative statement after five days of the incident, cannot be ruled out. It is then canvassed that many of the witnesses are manufactured witnesses and their testimonies are not credible.

12. The learned APP and the learned Advocate appearing on behalf of respondent No.2 Jitendra, have submitted that accused

No.1 Harishchandra is an in-service Sub Inspector. He has exerted influence upon the investigating machinery and was successful in hiding the axe. Because of his influence, the investigating machinery may not have taken the efforts of recovering the axe.

13. In so far as the contention of Jitendra having suffered a road accident is concerned, it is submitted that since Jitendra was riding a motor-cycle when the sudden attack took place near the Lahan Maruti Mandir, the medical reports at the Cottage Hospital and the Rural Hospital may have mentioned that it was a road accident. After he had recorded his statement with the police, that the case of a murderous attack by Harishchandra along with his accomplices, saw the light of the day. Jitendra has specifically deposed that Harishchandra was holding an axe and he inflicted a blow above the right eye of his forehead, after obstructing PW 1 near the Lahan Maruti Mandir. As PW 1 fell down in view of the vicious blow, the other accused surrounded him and pounced upon him with wooden sticks. They beat Jitendra practically on every part of his body. Since he started shouting loudly, some of the villagers inclusive of the wife and mother of Jitendra, rushed to save him. In the meanwhile, the accused stole the wrist watch, a gold ring and a gold bracelet. Chayabai, wife of Jitendra along with the mother of Jitendra tried to rescue him by practically laying their bodies upon him. Accused No.14 Dipak @ Shashikant, assaulted Chayabai and pulled her away

so as to expose Jitendra to further beating.

14. The testimony of Chayabai and Madhukar have been referred to, to indicate as regards the manner in which Jitendra was attacked, beaten up and the accused abused the ladies with foul and filthy language.

15. We found from the medical report of the Seva Superspeciality Hospital that Jitendra had suffered an incise wound as narrated above. A CT Scan of his brain was conducted to assess the gravity of the injury. There was a fracture of orbital rim of the frontal bone. He suffered a fracture of the right lamina papyracea (base of the nose) and fracture of the posterior wall of the right frontal sinus. He also suffered undisplaced fracture of squamous part of the right temporal bone. There was significant right frontal pneumocephalus (Pneumocephalus is the presence of air or gas within the cranial cavity. It is usually associated with disruption of the skull: after head and facial trauma, tumors of the skull base, after neurosurgery or otorhinolaryngology, and rarely, spontaneously.) The incise wounds had to be sutured and in view of the multiple bone fractures, the opinion of a specialized Orthopedic Surgeon had to be taken.

16. Dr. Brahmane PW 12 identified the two CT Scan films Exhibits 163 and 164 and stated before the Court that the injuries suffered by

Jitendra were caused due to a sharp and heavy object. He further voiced his opinion that the said injuries would result in deficit in smell sensation, either temporarily or permanently. The patient also suffered from seizure due to pneumocephalus with secondary serebral edima. These injuries were life threatening.

17. The State relied upon the further portions of the cross-examination of Dr. Brahmane and stated that today, Jitendra has lost his sense of smell and taste. His condition has not improved in the last two years and four months.

18. Having considered the submissions of the learned Advocates and having gone through the testimony of 14 witnesses on behalf of the prosecution and the two witnesses examined on behalf of the defense, it appears that the cause of the attack on Jitendra was on account of a police complaint made by Jitendra against Harishchandra. Before the convicts started assaulting Jitendra, who had fallen down owing to the blow of the axe, it was said that, “आमच्या विरुद्ध पोलीस स्टेशनला जाऊन फिर्याद देतो काय? आज आम्ही तुला पाहतो.” After Dipak / Accused No.14 pulled away Chayabai, one of the accused declared, “आता पिंट्या मेला. त्याला शेवटची श्रद्धांजली म्हणून एक एक द्या.” It was also said, “याला मारून टाका. याला सोडू नका.”

19. We are of the view that when the case was under investigation

and trial, this Court had granted anticipatory bail to practically all the accused, except Harishchandra, who is still behind bars and Dipak @ Shashikant, who was granted regular bail. Harishchandra was refused bail upto the Honourable Supreme Court.

20. We are of the prima facie view that accused No.1 Harishchandra, an in-service Police Sub Inspector, appears to be the mastermind behind planning the attack on PW 1. He had wielded the axe and it was he who delivered the first blow of the axe on the frontal side of the skull of Jitendra above his right eye. It appears that Jitendra had survived on account of the extensive treatment that he received from a private Superspeciality hospital. The Parola Rural Hospital had specifically referred him to a specialized Doctor, probably realizing that he would not survive if he was treated at the Rural Hospital. The antipathy borne by Harishchandra against Jitendra, is writ large on the face of record. Jitendra had earlier approached the Police Station and had lodged a complaint against Harishchandra, who is himself a Police Officer. It is appalling and would be disastrous for the society at large if Police Officers indulge in acts which are likely to kill a defenseless victim. It cannot be ruled out that Harishchandra, if granted bail, would use his influence and may commit such an act which might endanger Jitendra or those who have testified against him. We do not find this risk in granting bail to accused No.2, accused No.8, accused No.14 and accused No.15.

21. We have perused Section 307 of the Indian Penal Code, in the light of the vicious attack masterminded by Harishchandra and all attending circumstances. The State has preferred an appeal seeking enhancement of sentence. The possibility of Harishchandra being handed down an enhanced sentence of life imprisonment or ten years in jail cannot be ruled out. In these circumstances, the view taken by the Honourable Apex Court in Bhim Singh (supra), in our respectful opinion, would not apply to the case of Harishchandra.

22. Consequentially, Criminal Application No.1286 of 2020 is partly rejected to the extent of accused No.1 Harishchandra and is partly allowed to the extent of accused No.2 Yogesh Madhavrao Patil and Criminal Applications filed by Accused No.8 - Sharad Vishwas Patil, Accused No.14 - Dipak @ Shashaikant Adhikrao Patil and Accused No.15 - Dipak Himmatrao Patil are allowed on the following conditions:-

(A) The sentence to the extent of these convicts shall stand suspended until the decision in the appeal.

(B) Accused No.2 Yogesh Madhavrao Patil, Accused No.8 - Sharad Vishwas Patil, Accused No.14 - Dipak @ Shashaikant Adhikrao Patil and Accused No.15 - Dipak Himmatrao Patil, shall be released on bail upon tendering a personal surety of Rs.1,00,000/- (Rs. One Lakh only/-) by each of them and a

solvent surety of the like amount by each of them.

(C) These convicts shall not attempt to contact any of the witnesses or their relatives by whatsoever means, directly or indirectly, until the decision in their appeals.

(D) Each of these convicts shall report at the Parola Police Station on every Sunday in between 11.00 am to 1.00 pm and their attendance would be marked by the S.H.O. by obtaining their signatures in the Station Diary.

(E) Each of them shall tender their Election Commission's Voter id Card and the Aadhar Card before the S.H.O. while obtaining bail.

(F) Violation of any of the above conditions shall be a good ground for cancellation of bail.

23. Appeal No. 409 of 2020 is admitted. The State and appellant - Jitendra waive service of notice in the appeals filed by the convicts against the impugned judgment. In Criminal Appeal No.409 of 2020, learned Advocates have caused appearance on behalf of all the accused / acquitted persons and waive service on behalf of accused Nos.1 to 15.

24. Issue notice to the respondents in Criminal Application for leave to file appeal, filed by State, bearing No. 1797 of 2020 in Criminal Appeal No.528 of 2020, returnable on 4.12.2020. The

learned Advocate waive service of notice on behalf of accused Nos.1, 2, 8, 14 and 15.

25. The learned Advocates for the respective parties suggest that the R & P be returned to the Court of the learned Additional Sessions Judge at Amalner for preparation of paper book. As such, the Registry shall return the R & P to the said Court with a request to call for a paper book along with the original R & P, within a period of 12 weeks from today.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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A.K.Losarwar, PS