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

INTERIM APPLICATION NO. 1372 OF 2020

IN

CRIMINAL APPEAL NO. 458 OF 2020

Eknath Dharma Diwane

... Applicant

V/s

The State of Maharashtra & Ors.

... Respondents

.....

Mr. Raju Digamber Suryawanshi for the Applicant.

Mr. H.J. Dedhia, APP for the Respondent- State.

.....

**CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.**

DATE : 10TH DECEMBER, 2020

PC:

1. Heard learned Counsel appearing for the applicant.
2. By way of present application, the applicant prays for suspension of his sentence and his release on bail till the appeal is heard finally and disposed of.
3. In our order dated 2nd December, 2020, a reference is made to the ground raised by the applicant i.e. ground of parity. It was submitted before this Court that by an order dated 26th November, 2020, the application of Bhau Dharma Diwane was allowed. The sentence

imposed upon the applicant Bhau Dharma Diwane was suspended and he was released on certain terms and conditions.

4. The learned Counsel, today, invited our attention to the order of this Court dated 1st October, 2020 whereby the application filed at the instance of Laxman Shankar Diwane, Suresh Gaikar and Chandrakant Gaikar i.e. original accused Nos. 5, 10 and 11 was allowed. The Division Bench of this Court in its order dated 26th November, 2020 was pleased to refer the backdrop of the prosecution case.

5. Perusal of the order dated 26th November, 2020 further shows that parties were on cross terms and there is also prelude to the incident in question dated 25th September, 1987. In brief, it is the case of prosecution that on the date of occurrence at about 7.15 a.m. the accused persons gathered on the spot armed with weapons. The accused persons abused Sanjay and there was an assault on Vasant (PW-4) by the accused persons. After hearing commotion, Narayan and his brothers Haribhau i.e. deceased and Vilas reached on the spot. Then accused No.1 Balu Gaikar exhorted the other accused on the informant party. Accused Balu had thrown an acid bulb on the person of Haribhau. Accused No. 3 Bhau Diwane had ignited the gelatin stick used for blasting and threw the same on the person of Haribhau, the deceased,

who fell down. The rest of the accused persons assaulted the deceased Haribhau by means of deadly weapons including sword, axe and sticks. The deceased succumbed to the injuries and the rest of the witnesses also suffered grievous injuries.

6. While considering the application of Laxman Shankar Diwane & Ors, the Division Bench of this Court was pleased to observe that the so called theory of prosecution of using an acid bulb and gelatin stick is not well supported by any satisfactory evidence and there are many flaws in the version of witnesses.

7. The learned Counsel for the applicant submitted that the accused/appellants against whom an allegation of use of deadly weapon such as sword is made had moved this Court by filing an application for release on bail and their application is allowed. Whereas, the present applicant stands on a better footing, namely, only allegation against the applicant is of use of stick. The learned Counsel also by inviting our attention to the observations of the Division Bench in the order dated 1st October, 2020 submitted that one Suresh (A-10) and Chandrakant (A-11), who can safely be said to have been placed on a similar circumstance with the present applicant, had allegedly used stick in the incident are released on bail and the Division Bench was pleased to observe that

Medical Officer Dr. Pramod Satpute deposed that the injuries found on the persons of the first informant were either superficial or simple.

8. The learned Counsel submitted that so far as the role attributed to Suresh (A-10) and Chandrakant (A-11) is concerned, namely, use of stick, was under consideration and the Division Bench was pleased to observe that “we *prima facie* find that the role attributed to the applicants is relatively minor and there is an element of uncertainty as regards the exact overt acts attributed to the applicants”. The learned Counsel further submitted that the applicant was on bail during trial and has not committed any breach of conditions or any act of misusing the liberty granted to him.

9. The learned APP opposes the application.

10. On going through the orders of Division Bench dated 1st October, 2020 as well as 26th November, 2020, we find considerable force in the submissions of the learned Counsel. The learned Counsel is justified in making submissions before this Court that the applicant is entitled for his release on bail on the ground of parity. It is also not in dispute that the applicant while enjoying his liberty, pending trial did not commit the act of misusing the liberty granted to him.

11. As the learned Counsel has made out a case, the application is allowed with following order :

ORDER

- (i) The application stands allowed;
- (ii) The substantive sentence imposed upon the applicant Eknath Dharma Diwane (A-17) by the learned Additional Sessions Judge, Kalyan in Sessions Case No. 68 of 1996 by the judgment and order dated 27th November, 2019 stands suspended till disposal of this appeal;
- (iii) The applicant Eknath Dharma Diwane (A-17) be released on bail on furnishing a P.R.Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Kalyan;
- (iv) The applicant shall attend the Court of Additional Sessions Judge, Kalyan to mark his presence once in six months, on the date to be specified by the learned Additional Sessions Judge, Kalyan. In the event of two consecutive default in attending the Court on the dates so specified, the learned Additional Sessions Judge shall make

a report to the High Court and thereupon the State shall be at liberty to move for cancellation of bail;

(v) The application stands accordingly disposed of.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)