

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO.258/2020 IN CRIMINAL APPEAL NO. 227/2020
(ZANAK MUNNALAL TOMASKAR & ANOTHER **VERSUS** THE STATE OF MAHARASHTRA, THROUGH
PSO PS JARIPATKA, NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.K. Tiwari, counsel for the appellants.

CORAM : A.S. CHANDURKAR AND AMIT B. BORKAR, JJ.

DATE : JULY 28, 2020.

Hearing was conducted through Video Conferencing and the learned counsel for the parties agreed that the audio and video quality was proper.

The present application is moved by accused nos.2 and 3 for suspension of sentence imposed on them. By the judgment dated 25.02.2020, the applicants stand convicted for having committed offence punishable under Sections 143, 147, 148, 302, 307 and 324 read with Section 149 of the Indian Penal Code and they have been sentenced to suffer imprisonment for life.

Shri R.K. Tiwari, learned counsel for the applicants submits that the evidence with regard to accused nos.2 and 3 cannot be said to be of such a nature that would enable this Court to sustain the conviction. He submits that in the First Information Report, it has been stated that the present applicants had assaulted the deceased by way of kicks and fist blows. The report further states that the accused no.1-Prashant and accused no.4-Shivmohan were armed with knives. According to him, this version is consistent amongst other witnesses. In the statements recorded under Section 161 of the Code of Criminal Procedure, there is an omission as to assault by knives by

accused no.2-Ankush. He submits that it can be seen from the record that the police were visiting the spot continuously for about eight to ten days. There is a doubt created insofar as statement of PW6 which was recorded after about thirteen days. He therefore submits that by imposing appropriate conditions, the applicants be released on bail.

The application is opposed by Shri M.J. Khan, learned Additional Public Prosecutor for the State. He has referred to the deposition of PW4 to PW6 to submit that accused no.2-Ankush was stated to be holding a knife and that he had also assaulted the deceased. Since the provisions of Section 149 of the Penal Code stood attracted, the applicants are not entitled to be released on bail. There being substantial material against these applicants, he submits that the application is liable to be rejected.

We have *prima-facie* perused the evidence recorded during the trial. First Information Report dated 12.06.2016 indicates the role played by the present applicants. It has been stated that the present applicants had assaulted Imrat Rana with kicks and fist blows. The statement further shows that the accused no.1-Prashant and accused no.4-Shivmohan were carrying knives with which they had assaulted the deceased. When the depositions of PW1, PW2 and PW6 are perused, the omissions brought on record indicate absence of any statement made under Section 161 to the effect that accused no.2 was armed with a knife. Though the learned Additional Public Prosecutor sought to rely upon the depositions of PW4, PW5 and PW6, we find that certain omissions in that regard have been brought on record so far as present applicants are concerned. Considering the nature of evidence against the present applicants and in the light of the fact that they are behind bars since June-2016, we are inclined to suspend the sentence during the pendency of the appeal.

Accordingly, the application is allowed. The sentence imposed in Sessions Trial No.425 of 2016 against accused no.2-Ankush and accused no.3-Zanak stands suspended. The applicants shall furnish P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety in like amount. As a condition, they shall not enter the limits of Police Station Jaripatka during the pendency of the appeal. They shall not try to coerce the witnesses. The application is disposed of by clarifying that the observations made in this order are only for deciding the present application.

This order be communicated to the learned counsel appearing for the parties either on the email address or on WhatsApp or by such other mode, as is permissible in law.

(AMIT B. BORKAR, J.)

(A.S. CHANDURKAR, J.)

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