

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.234 OF 2021
IN
CRIMINAL APPEAL 143 OF 2020

RAVINDRA ADHAR SONWANE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Dhorde Vikram R.
APP for Respondent : Mr. R V Dasalkar

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.
Dated : August 30, 2021

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PER COURT :-

1. Pending criminal appeal no.143 of 2020 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Jalgaon in Sessions Case no 64 of 2017 dated 24.12.2019 convicting both the accused for having committed the offence punishable under section 302 read with section 34 of the Indian Penal Code and sentenced them to suffer imprisonment for life and to pay fine of Rs.7,000/- each, and in default to suffer S.I. for two months, the applicant/accused no.2 has preferred this application for suspension of the substantive part of the sentence and for bail.

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2. Learned counsel for the applicant/original accused no.2 submits that, the incident had taken place about 10.00 p.m. on Jalgaon Square. Deceased was the cousin of PW 1 and PW 2. Deceased was working as a driver on one Transport Vehicle, and on that day, he was driving his vehicle for the destination of Pachora to deliver Bisleri Bottles. Consequently, before reaching Pachora, deceased had made a phone call to PW 1 and PW 2 informing them that he would come to the house. As per the prosecution story, thus, PW 1 and PW 2, who were the cousin of the deceased, went to Jalgaon Square to receive the deceased. Deceased had come there while driving his delivery van and on reaching there and after meeting PW 1 and PW 2 he went to the side of the road for urinary purposes. However, while returning towards the vehicle, he dashed against the accused no.1. The present applicant/accused no.2 was also there alongwith accused no.1. Thus, quarrel had taken place between them. As per prosecution story, the present applicant/accused no.2 has caught hold the deceased from his backside and accused no.1 had given blow of

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knife on the abdomen of the deceased, so also on the back of the deceased, when deceased tried to escape and run towards his vehicle.

3. Learned counsel for the applicant submits that, the incident had taken place without any premeditation. It has taken place as of sudden. The learned counsel for the applicant submits that, in this backdrop, there cannot be any common intention on the part of the applicant/accused no.2 to commit the murder of the deceased. The learned counsel submits that, even there is no evidence indicating that the applicant/accused no.2 had instigated the accused no.1 nor any evidence to indicate that the applicant/accused no.2 had knowledge that the accused no.1 was having knife with him and he is likely to assault the deceased. Learned counsel submits that, PW 2, who is also the cousin, claims to have accompanied PW 1 at the relevant time, has not supported the prosecution case, however, in cross-examination, he has given certain admissions, but again in his cross-examination by the accused, he has

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denied to witness the incident of actual assault. Learned counsel for the applicant submits that, though the applicant was not on bail during the trial, however, considering the evidence as against him and since his role is restricted to the extent as stated by PW 1, the applicant is entitled to be released on bail.

4. Learned counsel for the applicant has also pointed out that the prosecution has failed to prove that the incident had taken place on the spot of incident. Learned counsel submits that, as admitted by the panch witness so also by the Investigating Officer, there were no blood stains on the spot. Furthermore, there is no recovery of any incriminating articles at the instance of the applicant/accused no.2. Learned counsel submits that, even there were no blood stains on the clothes of the applicant/accused no.2.

5. The learned APP has strongly resisted the application on the ground that there are two eye witnesses to the incident. PW 1, who is cousin of the deceased, has deposed before the Court that, in his

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presence the present applicant caught hold the deceased from his backside and original accused no.1 had assaulted him and caused injury on the abdomen and back of the deceased with the help of knife. Learned APP submits that, even said knife used in the assault came to be recovered at the instance of the accused no.1. Learned APP submits that, though PW 2 has not supported the prosecution story, however, he has admitted the prosecution story as it is in his cross-examination on behalf of the State. Though, PW 2 has again changed his version during the cross-examination on behalf of the accused, however, categorically, PW 2 has admitted the presence of the applicant/original accused no.2 alongwith the accused no.1 at the spot of incident. Learned APP submits that, there is a evidence about common intention shared by the applicant/accused no.2 alongwith the accused no.1. The applicant is not entitled to be released on bail.

6. We have carefully gone through the prosecution evidence, particularly, the evidence of PW 1. It appears

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that the incident had taken place as of sudden, without any premeditation. Deceased from his vehicle while transporting the goods had informed to PW 1 on phone about his arrival and thus PW 1 alongwith PW 2 had gone to Jalgaon square to receive him. It thus appears that there was no reason for PW 1 and PW 2 to stand there with some prior concert of mind to make an assault on the deceased. Even, there is no evidence about any enmity between them. It appears from the prosecution evidence that, the deceased after attending the nature's call while returning to his transport vehicle, inadvertently dashed against accused no.1 and thus the quarrel had taken place. Further, in the said quarrel, though there are allegations that the present applicant had caught hold of the deceased from his backside, however, it further appears that, as of sudden accused no.1 took out knife from his pocket and inflicted injuries on the abdomen of the deceased with the help of knife. Even, he has also inflicted one injury on the back of the deceased. Surprisingly, there were no blood stains either on the spot or on the clothes of the

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applicant/accused. Even though, there are other eye witnesses, rather independent one, gathered on the spot and even the investigating officer has also admitted about it, the prosecution has not examined those witnesses. Thus, except the evidence of PW 1 about the alleged incident and the manner in which the incident had taken place, there is no further independent corroboration to the prosecution story. Thus, considering the entire aspect of the case, particularly, the role attributed to the applicant/accused no.2, we are inclined to allow this application. Hence, following order.

ORDER

- I. Criminal application is hereby allowed.
- II. Pending the Criminal appeal no.143 of 2020 preferred against the judgment and order of conviction dated 24.12.2019 passed by the learned Additional Sessions Judge, Jalgaon, the substantive part of the sentence as passed against the applicant/accused no.2 RAVINDRA ADHAR SONWANE stands suspended, and till then, the applicant/accused no.2 RAVINDRA

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ADHAR SONWANE be released on bail on furnishing P.B of Rs.25,000/- (Rs. Twenty Five Thousand) with one solvent surety of the like amount.

III. Criminal Application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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