

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.972 OF 2020
IN
CRIMINAL APPEAL NO.299 OF 2020

1. Shivaji s/o Daulat Kharabe
and Ors. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.SJ Salunke, Advocate for Applicant/s;

Mr.SB Narwade, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 7th April, 2021.

PER COURT :-

1. Heard learned Advocate and learned APP
appearing for respective parties.

2. By this Criminal Application filed under
Section 389 of Cr.P.C., 1973, the applicants pray
for suspension of substantive sentences and
releasing them on bail during pendency and final
hearing of the Criminal Appeal.

3. The applicants are the original accused
Nos.1 to 3 and 5 to 19 in Special (Atrocity) Case
No.19/2012, who have been convicted by learned
Additional Sessions Judge-4/Special Judge,
Parbhani, vide judgment and order dated 25.2.2020,

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whereby the applicants have been convicted and sentenced thus, -

a) For the offence punishable under Sections 148, read with 149, 147, 323 of IPC, and sentenced to suffer R.I. for fifteen days and to pay fine of Rs.500/- each, in default, S.I. for eight days

b) For the offence punishable under Sections 324 read with 149 of IPC. and sentenced to suffer R.I. for one month and to pay fine of Rs.2,000/-, in default, R.I. for two months.

. All the sentences are ordered to run concurrently, and out of the fine amount, if paid, compensation of Rs.3,000/- was ordered to be paid to informant-Kamalbai Jagan Chavan.

4. It is vehemently submitted on behalf of the applicants that the the learned Special Judge has misread and misconstrued the evidence brought on record and erred in convicting and sentencing the applicants. The prosecution has utterly failed to prove the charges levelled against the applicant/s by a cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. The conviction is based on surmises and conjectures. No reliable witnesses were examined. The investigation was not conducted

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in a fair and impartial manner. There is no likelihood of early hearing of the appeal. The prosecution did not adduce any evidence to prove the charges levelled against the applicants beyond reasonable doubt. The applicants were on bail during the trial and have also deposited the fine amount within time. They are falsely implicated in the alleged crime. They would abide by the terms of the bail. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicants/appellants intend to agitate and address them at the time of final hearing of the appeal and they have every hope of success in the appeal. Consequently, the applicants pray for releasing them on bail by suspending the substantive sentences awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP strongly resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicants. The depositions of the witnesses corroborate to each other. The incident took place in a public place, where the adjacent owners could see as to what incident was going on, which indicates that the accused have abused the informant and witnesses in 'public view' on their caste. The testimony of the informant has been sufficiently corroborated by all the witnesses. The witnesses have clearly deposed as to who caused injuries to them. The

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accused caused injuries to the witnesses owing to previous enmity on the discord of agricultural land. The learned Special Judge has properly scanned and scrutinized the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be rejected and it be rejected accordingly.

6. As it appears from the impugned judgment and order of conviction of the learned Special Judge, particularly the sentences, that have been awarded against the applicants for several offences, are the short-term sentences. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicants-appellants when they have demonstrated that material and significant points raised by them in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicants were on bail throughout the trial, have not misused their liberty and had also deposited the fine amount. In this view of the matter, it can be said that a case is definitely made out for releasing the applicants on bail by suspending the substantive sentence awarded against the applicants, during pendency and final disposal of the appeal. Hence, following order,-

ORDER

- i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicants by learned Additional Sessions Judge-4/ Special Judge, Parbhani, vide judgment and order dated 25.2.2020, in Special (Atrocity) Case No.19/2012, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants – 1)Shivaji s/o Daulat Kharabe; 2) Shankar s/o Shivaji Kharabe; 3) Balasaheb s/o Kondiram Kharabe; 4) Bhagwan s/o Balaji Kharabe; 5) Rajebhau s/o Haribhau Kharabe; 6) Dhondi @ Dhondiram Bhujangrrao Kharabe; 7) Vishnu s/o Ganesh Bodkhe; 8) Rameshwar s/o Kishan Bodkhe; 9) Babarao s/o Daulat Kharabe; 10) Rajebhau @ Rajaram Babarao Kharabe; 11) Sopan s/o Haribhau Kharabe; 12) Balaji s/o Narayan Kharabe; 13) Datta @ Dattarao Balaji Kharabe; 14) Vitthal s/o Balaji Kharabe; 15) Pandurang s/o Babarao Kharabe; 16) Ambadas s/o Sitaram Bodkhe; 17) Prakash s/o Vasant Bharad; and 18) Subhash s/o Vasant Bharad, be released on their executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The applicants shall not commit any criminal activity.

v. The applicants shall remain present before the learned Special Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and, thereafter, the Special Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicants to remain present before the Special Court, the Special Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV