

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

**CRIMINAL APPLICATION NO.919 OF 2021
IN
CRIMINAL APPEAL NO.209 OF 2021**

1. Matin s/o. Gafar Shaikh,
2. Mobin s/o. Gafar Sharikh ..Applicants

Vs.

1. The State of Maharashtra,
2. Shaikh Wasim Aziz ..Respondents

Mr.Shaikh Mazhar A. Jahagirdar, Advocate for applicants
Mr.S.N.Morampalle, APP for respondent no.1
Mr.N.B.Narwade, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : JUNE 29, 2021
PRONOUNCED ON : JULY 06, 2021**

ORDER :-

This is an application for suspension of substantive sentence of imprisonment. The applicants/appellants have been convicted by learned Addl. Sessions Judge, Ahmednagar, vide judgment dated 24.03.2021 in Sessions Case No.130 of 2013, for the offences punishable under Sections 307 and 323 read with Section 34 of the Indian Penal Code (I.P.C.). They have

been directed to suffer rigorous imprisonment for ten years and to pay fine of Rs.50,000/- each, in default, to suffer rigorous imprisonment for two years for the offence punishable under Section 307 of I.P.C. They have also been directed to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for one month for the offence punishable under Section 323 of I.P.C. Both the substantive sentences have been directed to run concurrently.

2. Heard. Perused the impugned judgment and the relevant evidence relied on.

3. Mr.Shaikh Mazhar A. Jahagirdar, learned counsel for the applicants/appellants, would submit that the case dates back to the year 2012. The applicants were on bail pending the trial. There is a counter case, which is pending before the Court of Judicial Magistrate, First Class. The applicants/appellants have been assaulted first. The injury suffered by the victim may be said to have been resulted in

exercise of right of private defence. According to learned counsel, it will take time for hearing of the appeal. He, therefore, urged for grant of the application.

4. Mr.Morampalle, learned APP for respondent no.1 and Mr.N.B.Narwade, learned counsel for respondent no.2 – informant, would submit that it was a murderous assault. The victim suffered a serious head injury. Learned counsel took me through the evidence on record to ultimately urge for rejection of the application.

5. The head injury is attributed to the assault made by applicant no.2. True, applicant no.1 also participated in the incident. His liability for the offence under Section 307 of I.P.C. is, however, sought to be invoked on the basis of Section 34 of I.P.C. In my view, therefore, the application of applicant no.1 for suspension of substantive sentence deserves to be allowed at the first instance itself.

6. The incident dates back to the year 2012. The applicants were on bail pending the trial. There is a counter

case. Both the applicants also suffered injuries. True, simple in nature. The applicants would run an eatables stall. They would vend non-veg food. The injured and his associates had been to the stall of the applicants. The assault had a prelude of quarrel on account of late service and previous dues. The injured and his associates, therefore, went to nearby stall. The applicants/appellants, allegedly, went there and assaulted the victim. It is reiterated that the applicants/appellants too, suffered injuries. The counter case is subjudice before the trial Court. There is no likelihood of the appeal to have its turn for final hearing in the near future.

7. In the factual backdrop, I am inclined to grant the application. Hence, the following order:-

(i) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is suspended. The applicants be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

(ii) The application stands disposed of.

[R.G. AVACHAT, J.]

KBP