

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

**916 CRIMINAL APPLICATION NO.2139 OF 2021
IN APEAL/458/2021
WITH
APEAL/458/2021**

**BHANUDAS VITTHAL KUTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicants : Mr.Deshmukh Saud A.N.
APP for Respondents-State : Mrs. G.L. Deshapnde
Advocate for Respondent No. 2 : A.N. Nagargoje
...

CORAM : N.R. BORKAR , J.

DATE : 28th October, 2021.

P. C. :

1. This is an application under Section 389 of the Code of Criminal Procedure (for short "Cr.P.C.").
2. The applicants came to be convicted for the offences punishable under Sections 143, 147, 148, 149, 324 and 307 read with Section 149 of the Indian Penal Code (for short "IPC") and maximum sentence which applicants are directed to suffer is rigorous imprisonment for 7 years.
3. I have heard the learned counsel for the applicants and the learned APP for the Respondent-State and the learned counsel for the Respondent No. 2.

4. The learned counsel for the applicants on instructions seeks permission to withdraw the present application in respect of the applicant Nos. 2 and 3. The application as regards applicant Nos. 2 and 3 is therefore dismissed as withdrawn.

5. The learned counsel for the applicants submits that no overt act is attributed to the applicant Nos. 1, 4 and 5 in crime in question. It is submitted that the applicant Nos. 1, 4 and 5 were on bail during trial and they did not misuse the liberty granted to them. It is submitted that the substantive sentence imposed by the trial Court, therefore, may be suspended and the applicant Nos. 1, 4 and 5 be released on bail.

6. On the other hand, the learned APP for the respondent No. 1-State and the learned counsel for the respondent No. 2 submits that due to assault by the present applicants along with other co-accused though the victim is alive but he is not in a position to speak. It is submitted that considering the nature of assault the substantive sentence may not be suspended and the applicant Nos. 1, 4 and 5 may not be released on bail.

7. I have perused the evidence of eye witnesses namely Anna Khandekar and Ramesh Dhumal. Anna Khandekar stated in his evidence that accused Ramesh and Jagannath assaulted the

victim by sticks and at that time applicant Nos. 1, 4 and 5 were present there with sticks. However, no overt act is attributed to the applicant Nos. 1, 4 and 5. Considering these facts and as the applicant Nos. 1, 4 and 5 were on bail during the trial, I am inclined to suspend substantive sentence and released them on bail. Therefore, following order is passed :

ORDER

- a. Application is allowed.
- b. Substantive sentence of applicant No. 1. Bhanudas s/o Vitthal Kute, 4. Navnath s/o Ramdas Kute and No. 5. Damu Shankar Kute imposed by the trial Court vide impugned Judgment and order is suspended and they are released on bail on executing P.R. Bond in the sum of Rs. 25,000/- (Rs. Twenty Five Thousand) each with one surety in the like amount.
- c. The applicant Nos. 1, 4 and 5 shall attend the concerned police station, once in month i.e. on 1st Monday of the every month in between 11.00 to 2.00 p.m. during pendency of the present appeal and they shall not indulge in the similar type of crime.

**(N.R. BORKAR)
JUDGE**