

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1323 OF 2020
IN
CRIMINAL APPEAL NO.434 OF 2020**

Vijay Anna Late ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1324 OF 2020
IN
CRIMINAL APPEAL NO.434 OF 2020**

Rajendra Magar Nagargoje ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1325 OF 2020
IN
CRIMINAL APPEAL NO.434 OF 2020**

Ramkrishna Anna Late ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
CRIMINAL APPEAL NO.436 OF 2020**

Samadhan Vasant Gholve and Ors. ... Appellants

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1337 OF 2020
IN
CRIMINAL APPEAL NO.436 OF 2020**

Samadhan Vasant Gholve ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1338 OF 2020
IN
CRIMINAL APPEAL NO.436 OF 2020**

Sunita Rajendra Nagargoje ... Appellant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1339 OF 2020
IN
CRIMINAL APPEAL NO.436 OF 2020**

Pravin Rajendra Nagargoje ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1340 OF 2020**

Usha Samadhan Gholve ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1341 OF 2020
IN
CRIMINAL APPEAL NO.436 OF 2020**

Akshay Rajendra Nagargoje ... Applicant

V/s.

The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1342 OF 2020
IN
CRIMINAL APPEAL NO.436 OF 2020**

Vasant Rajaram Gholve ... Applicant

V/s.

The State of Maharashtra

... Respondent

**WITH
INTERIM APPLICATION NO.1343 OF 2020
IN
CRIMINAL APPEAL NO.436 OF 2020**

Nirmala Vijay Late

... Applicant

V/s.

The State of Maharashtra

... Respondent

**WITH
INTERIM APPLICATION (ST) NO.4842 OF 2020
IN
CRIMINAL APPEAL NO.211 OF 2021**

Dashrath Magar Nagargoje and Ors.

... Applicant

V/s.

The State of Maharashtra

... Respondent

Ms. Vrushali Maindad a/w Ms. Ankita Nishad and Ms. Shaheen Kapadia for the Applicant in IA/1323/2020, IA/1324/2020, IA/1325/2020, IA/1337/2020 to IA/1343/2020 and Appellants in Apeal/434/2020 and Apeal/436/2020.

Mr. Kuldeep Patil a/w Ms. Heena Suvarnakar, for Applicant in IAST/4842/2020 and Appellant in Apeal/211/2021.

Mr. Govind Solanke, for Respondent No.2 in Apeal/434/2020 in Apeal/211/2021.

Ms. P.P. Shinde, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

DATED : 10th MARCH 2021.

PC. :

1. These are applications filed under section 389 of Cr.PC

seeking suspension of substantive sentence imposed upon the appellants herein upon conviction for the offence punishable under section 302 r/w 149 of Indian Penal Code and all offences with which they were charged and the appellants were sentenced to suffer RI for life and fine of Rs.20,000/- each in default, further SI for 2 years.

2. The case of the prosecution is that the agricultural land of deceased Prakash Neminath Late has a boundary with the agricultural land of the family of the accused persons. That there was a boundary dispute between both the families. The lands are situated at village Mirzanpur, Taluka Barshi. Both the families have their cattle shed and residential houses in their respective agricultural lands. It is a matter of record that no civil suit is pending between the parties neither any proceedings are pending before Taluka Inspector of Land Records over the boundary disputes. It is further the case of the prosecution that on 1st April 2016 at about 8.30 am, Prakash (deceased) had been to his agricultural land and had commenced his agricultural operations. He was being followed by his brother Nitin Neminath Late (PW.3). That PW.3 – Nitin had seen accused no.2 – Vijay making a call on his cell phone and informing someone that Prakash had commenced the

agricultural operations. He was requesting the other person to come to the land as soon as possible. That, within no time all the accused persons had reached the agricultural land of Prakash. They were armed with deadly weapons like iron rods, sticks, axes, motorcycle chain, etc. That they had questioned Prakash as to why he had commenced agricultural operations and had then mounted assault upon him. P.W.3 Nitin had naturally intervened to rescue his brother. The accused persons had then assaulted P.W.3 Nitin. He had raised cries. Upon hearing his cries, his parents had also rushed to the spot to rescue their sons and at that juncture, they were also not spared by the accused persons.

3. Evidence on record shows that Prakash was brutally assaulted and he was rushed to Jagdale Mama Hospital at Barshi by P.W.3 – Nitin. While in transit Prakash was conscious and was demanding water. That, while being treated, he had succumbed to injuries. P.W.3 had then lodged a report at Vairag Police Station on the basis of which Crime No.86/2016 was registered at Vairag Police Station against all the accused for the offence punishable under sections 302, 307, 323, 143, 147, 149, 504 and 506 of Indian Penal

Code. Two of the accused persons were juvenile in conflict with law.

4. With the help of the learned counsel for the applicants, we have gone through the substantive evidence of the witnesses recorded at the time of trial.

5. According to P.W.3, accused no.1 and accused no.3 – Rajendra were armed with axes whereas, Sangram - juvenile in conflict with law was armed with an iron rod and the accused no.2 was armed with motorcycle chain. All the other accused persons were armed with sticks. According to P.W.3, when he attempted to rescue his brother upon which he was assaulted by the original accused nos.1 and 3, he was therefore, constrained to leave the spot and rushed away. Thereafter, his parents had made an attempt to rescue Prakash and they were also assaulted.

6. The injury certificates of P.W.5 and P.W.6 i.e. the father of the deceased Neminath and his mother Kashibai which is at Exh.176 have been disputed by the accused. The learned counsel submits that there is no cogent and convincing evidence that P.W.5 and P.W.6 were

assaulted by the accused persons. Hence, they do not deserve to be believed moreover, it shatters the testimony of P.W.5 and P.W.6 as eye-witnesses. It is submitted that P.W.10 – Dr. Yemul who has proved the injury certificates of P.W.5 and P.W.6, has admitted in the cross-examination that Exh.176 is not showing the fact of surgery performed on the patient, nor mentions the history of assault and the certificate does not specify nature of injury like grievous or simple. However, the same cannot be taken into consideration at this stage.

7. Perused the evidence of P.W.9 – Dr. Snehal Nadgire who has performed the autopsy on the dead body of Prakash and has proved the post-mortem notes which are at Exh.159. It appears that there are about 9 stab wounds on the person of the deceased. The situs of 9 stab wounds needs to be taken into consideration. They are on posterior aspect of left arm - 1 x 1 x 3 cm, lateral aspect of right leg 4 in number – 1 x 1 x 3 cm each and 5 stab wounds on left leg - anterior medial and lateral aspect of left leg. There is a fracture on the left and right femur. All the other injuries are in the form of contusions and abrasions. Doctor has opined that the cause of death is hypovolmic and neurogenic shock due to extensive injuries.

8. PW.9 has further admitted in the cross-examination that she could not find any injuries under the scalp or any fracture to skull vault. It is also admitted that contusions and abrasions are not on the vital part of the body.

9. According to respective counsel, the accused persons deserve to be enlarged on bail during the pendency of the appeal as omnibus allegations have been made against all the accused and it is doubtful as to whether the witnesses i.e. PW.3, PW.5 and PW.6 can be relied upon.

10. As against this, the learned APP who is assisted by the learned counsel for the Respondent No.2 has vehemently submitted that in fact, it is a case of direct evidence. The deceased was brutally assaulted and the accused persons are not entitled to any leniency at the hands of this Court during the pendency of the appeal. It is submitted that even after the incident of 2016 there was no peace and tranquility in the village, even after the release of the accused nos.9, 10, 11 and 12. The accused no.9 had lodged a frivolous case against PW.3 in which 'B' summary has been filed.

11. We have considered the evidence on record and the submissions advanced by the learned counsel for the appellants and the learned APP. From the situs of the injury, it prima facie, appears that except accused nos.1, 2 and 3 all the other accused are alleged to have been holding sticks. They had allegedly inflicted the stick blows on the deceased and his parents. There is no injury certificate of P.W.3 on record. Most of the injuries are on the arms and the femur. No injury was seen on any vital part of the body. Almost all the injuries except injury nos.7, 12, 16 and 18 are in the nature of contusions and abrasions and are found on arms, both shoulders, forearms, thumbs, knees and scapula and gluteal region and on the scalp of frontal left and temporal region. That the accused nos.6, 9 10, 11, 12 and 13 were on bail during the pendency of the trial. In view of this, this Court is not inclined to suspend the substantive sentence of original accused nos.1, 2 and 3. Hence, we pass the following order :-

ORDER

- (i) Interim Application Nos.1325/2020, 1338/2020, 1339/2020, 1340/2020, 1341/2020, 1342/2020, 1343/2020 and Interim Application (St.) No.4842/2020 are allowed;

- (ii) Substantive sentence of the original accused nos.4 to 13 stands suspended. They be enlarged on bail on furnishing P.R. Bonds in the sum of Rs.20,000/- each and one or more solvent sureties in the like amount;
- (iii) The accused shall report to the Court of the Additional Sessions Judge, Barshi once in six months on the dates stipulated by the learned Sessions Judge. Upon failure to report on any two consecutive dates, the learned Sessions Court shall make a report to the High Court and the prosecution would be at liberty to seek cancellation of bail;
- (iv) The applicants shall not enter into village Mirzanpur till 30th June 2021;
- (v) Applications are allowed on above terms and stands disposed of.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)