

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1643 OF 2021
IN
CRIMINAL APPEAL NO. 517 OF 2021

Mahadev Baba More

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr.Vir Dhawal Deshmukh a/w Mr.Sagar S. Tambe i/b Mr.Ritesh
M. Thobde for the Applicant.

Mrs.M. M. Deshmukh, APP, for Respondent-State.

CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.

DATE : 17 August 2021

P.C. :

. By this Application, the Applicant (Accused No.3) is seeking an order for suspension of sentence and release on bail. The Applicant and three others, were put on trial in Sessions Case No.57 of 2012 before the learned Additional Sessions Judge, Pandharpur, District-Solapur under Section 302, 307, 326, 504, 506 read with 34 of the Indian Penal Code ('IPC' for short) for having intentionally caused the death of Ankush Lendve and an attempt to cause murder of the injured witness Tanaji Lendve (PW-2) and others.

2. The prosecution case as disclosed from the complaint lodged by Navnath Lendve (PW-1) is that his cousin brother Tanaji (PW-2) had purchased one pickup van for their nephew Pandurang (PW-10). The Accused No.1 Dada Lendve had hired the pickup van to carry a buffalo from Lendve Chinchale to Sangola. The fare agreed was Rs.300/-. However, the Accused No.1 Dada paid only Rs.200/-. PW-10 Pandurang demanded remaining amount Rs.100 by which Dada got annoyed. This incident happened on 3 June 2010.

3. On the following day i.e. on 4 June 2010 at about 7.30 p.m. to 8.00 p.m., PW-1 Navnath, PW-2 Tanaji and Ankush (Deceased), Dharmaraj Gena Lendve and his son Samadhan, Aachindra Lendve, Audumbar Lendve, (PW-6) Bhausheb Vishwanath Lendve and some others were standing in front of grocery shop of Dhanaji Lendve, in the main square at Lendve Chinchale, Taluka-Mangalwedha, District-Solapur. It is alleged that the Accused No.1 Dada, Accused No.2 Madhukar along with Patangrao (Son of Accused No.1-Dada) and one unknown person came on two motorcycles. The Accused-Dada accosted PW-2 on the point of demand for the balance fare and all the four accused assaulted PW-2. It is the material prosecution case that deceased Ankush along with injured Dharmaraj and Aachindra attempted to intervene when they were also attacked and assaulted by a knife, sickle and stones. On the basis of the

complaint lodged by PW-1 Navnath the offence came to be registered. Out of the four accused the Accused No.4 Tanaji died during the course of the trial. The present Applicant and the Accused Nos.1 and 2 have been convicted under section 302, 307 and 326 read with 34 of the IPC.

4. We have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor for the State. Perused record.

5. We find that PW-1 has not named the present Applicant in the FIR. PW-1 has named the other accused and one unidentified person. Admittedly, the Investigating Officer did not conduct any identification parade. The learned counsel for the Applicant submitted that in the absence of conduction of the test identification parade, the identification made by the witnesses in the Court for the first time is suspect and cannot be accepted. The learned APP has submitted that the identification made before the Court being substantive evidence can always be acted upon.

6. *Prima facie* we find that the present Applicant is not named in the FIR. PW-1 Navnath has also admitted that the present Applicant was shown to him in the Police Station. The supplementary statement of Navnath came to be recorded on 8

June 2012. Even PW-6 Audumbar states that he got acquainted with the Applicant after the incident as nephew of the deceased Dada Lendve. Although PW-2 in his evidence has named the Applicant that part is brought on record as a contradiction (to the extent of the involvement of an unknown person) in the cross-examination). The Applicant was on bail during the course of the trial.

7. Considering the overall circumstances, in our view the Applicant deserves to be released on bail. Hence the following order.

ORDER

- (i) The substantive sentence of imprisonment awarded to the Applicant - Mahadev Baba More is hereby suspended, pending disposal of the Appeal.
- (ii) The Applicant-Mahadev Baba More shall be released on bail on execution of a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount and subject to payment of fine, if not already paid.
- (iii) Bail bonds to be furnished before the learned Sessions Judge.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)