

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 153 OF 2021
IN
CRIMINAL APPEAL NO. 1711 OF 2019**

**SNEHA
NITIN
CHAVAN**

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2021.08.18
17:56:30 +0530

Balu @ Lakha Yashwant Gaikar ..Applicant
V/s.
The State of Maharashtra & Ors. ..Respondents

**INTERIM APPLICATION NO. 193 OF 2021
IN
CRIMINAL APPEAL NO. 1711 OF 2019**

Pandurang Dharma Diwane ..Applicant
V/s.
The State of Maharashtra & Ors. ..Respondents

Mr. Ashok Mundargi, Senior Advocate a/w Ameya Pitale i/b Ajit
Ram Pitale for the Applicants.
Mrs. P.P. Shinde, APP for the Respondent/State.
Mr. Parth Sanghrajka for the Respondent No.4.

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

DATE : 17 AUGUST 2021

P.C.

. The Applicant Balu Gaikar (Accused No.1) and Pandurang
Diwane (Accused No.4) are seeking an order for suspension of
sentence and for bail.

2. The incident in question had happened as far back as on 25 September 1987 at village Garse, Taluka Kalyan, District Thane. According to the prosecution, the Applicant Balu Gaikar had asked for no objection for grant of Government land and an application was made to that effect to the Grampanchayat. The deceased Haribhau Diwane was at the relevant Sarpanch of the Grampanchayat. The Grampanchayat had passed a resolution refusing to grant the land on account of which the Applicant Balu Gaikar was annoyed. On the day of incident at about 7.15 a.m., the Applicants along with several others are alleged to have assembled with sticks, sword, axe and acid bulbs etc. Sanjay, who is the nephew of the complainant had gone to purchase tea powder, when he was abused. Hence, Vasant, the brother of the complainant went to fetch back Sanjay. It is alleged that all the accused formed an unlawful assembly and assaulted the deceased Haribhau and other injured witnesses. Haribhau died as a result of the injuries sustained.

3. Upon investigation, in all 24 accused were sent for trial including the present Applicants. During the course of trial, 9 out of 24 accused died and the trial abated against them. The learned Sessions Judge by the impugned Judgment has convicted 7 out of 15 remaining accused while 8 were acquitted. It may be mentioned that original accused No.1 Balu Gaikar, accused No.3 Bhau Diwane, accused No.5 Laxman Diwane, accused No.10

Suresh Gaikar, accused No.11 Chandrakant Gaikar and accused No.17 Eknath Diwane have been convicted for the offence punishable under Section 302 read with Section 148 and 149 of IPC for having intentionally caused death of Haribhau Diwane. They have also been convicted for the offence punishable under Section 324 read with Section 149 of IPC for having cause hurt to the injured witnesses.

4. We have heard the learned counsel for the parties. Perused record.

5. It is submitted by Mr. Mundargi, the learned Senior Advocate for the Applicants that 5 out of 7 accused who have been convicted have already been released on bail by the Court. In the submission of the learned Senior Advocate, the Applicants would be entitled for bail on the ground of parity. It is submitted that Applicant Balu Gaikar is alleged to have thrown an acid bulb on the deceased while Applicant Pandurang Diwane is alleged to have assaulted him by a sword. The learned Senior Counsel has taken us through the evidence of injured eyewitnesses and PW-7 Dr. Pramod Satpute, who has conducted postmortem examination on the dead body of Haribhau. He pointed out that out of 8 injuries, the injury Nos. 1 are 5 are shown to be the acid burns while injury No.4 is the injury which according to the prosecution is attributable to the assault by the accused No.1 and

accused No.4 respectively. It is submitted that none of the injuries are stated to be the cause of death. He, therefore, submitted that looking to the nature of the incident in which two accused namely accused No.1 Balu Gaikar and accused No.18 Ram Kukane were also injured and the fact that the incident had happened about 34 years back and Applicants were on bail during the trial, they may be released on bail.

6. The learned APP submitted that the offence is serious in which Haribhau has lost his life and 9 others were injured. She, however, did not dispute that 5 out of 7 accused who have been convicted have already been released on bail.

7. We have considered the circumstances and the submissions made. *Prima facie*, it appears that in the incident, the deceased as well as injured eyewitnesses as also the accused Nos.1 and 18 had sustained injuries. The prosecution case is that the Applicant Balu had thrown a acid bulb while Applicant Pandurang assaulted the deceased by sword. The prosecution has examined 4 out of 9 injured witnesses namely PW-1 Narayan Diwane, PW-2 Ram Diwane, PW-4 Vasant Diwane and PW-5 Vimal Diwane.

8. The learned Sessions Judge has acquitted 8 out of 15 accused who faced trial. The Applicant along with others have been convicted under Section 302 and 324 of IPC with the aid of

Section 149 IPC. The record discloses that Laxman Diwane (accused No.5), Suresh Gaikar (accused No.10), Chandrakant Gaikar (accused No.11) have been released by this Court on bail by order dated 01 October 2020 in Interim Application No. 1 of 2019. Accused No.3 Bhau Diwane has been released on bail by order dated 26 November 2020 in Interim Application No. 1331 of 2020. Lastly, accused No.17 Eknath Diwane has been released on bail by order dated 10 December 2020 in Interim Application No. 1372 of 2020. In our considered view, once the accused are convicted with the aid of Section 149, the Applicants would be entitled to parity, notwithstanding some distinction regarding nature of the assault and the overt act attributed to the present Applicants. The Applicants were on bail during the course of trial.

9. Considering the over all circumstances, the following order is passed:

ORDER

(i) The substantive sentence awarded to the Applicants Balu Gaikar and Pandurang Diwane is hereby suspended pending disposal of the appeal.

(ii) The Applicants Balu and Pandurang be released on bail on furnishing a PR bond of Rs.25,000/- each with one or two solvent sureties each in the like amount, to the satisfaction of the learned Additional Sessions Judge, Kalyan.

(iii) The Applicants shall attend the Court of Additional Sessions Judge, Kalyan, to mark their presence, once in six months, on the date to be specified by the learned Additional Sessions Judge, Kalyan. In the event of two consecutive defaults in attending the Court on the dates so specified, the learned Additional Sessions Judge shall make a report to the High Court and thereupon the State would be at liberty to move for cancellation of bail.

(iv) Both the applications are disposed of accordingly.

(C.V. BHADANG, J.)

(NITIN JAMDAR, J.)