

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

***INTERIM APPLICATION NO.1485 OF 2021
IN
CRIMINAL APPEAL NO. 487 OF 2021***

1. Deepak Karbhari Shelke,
2. Santosh Karbhari Shelke
3. Parubai Karbhari Shelke

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr. Vaibhav Kadam for the Applicants

Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
WEDNESDAY, 30th JUNE 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicants seek suspension of their sentences and enlargement on bail, pending the hearing and final disposal of the appeal.

3 The applicants along with other co-accused, vide judgment and order dated 8th March 2021 passed by the learned Additional Sessions Judge, Nashik, in Session Case No. 109/2015, have been convicted and sentenced as under:

- for the offence punishable under Section 307 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years each and to pay fine of Rs.500/- each, in default, to suffer rigorous imprisonment for 3 months each.

4 Learned counsel for the applicants submits that the applicants were on bail pending trial. He submits that a perusal of the evidence of the injured i.e. PW 2-Harish Shergil shows that it is co-accused-Vicky Khicchi, who pulled out a knife from his pocket and assaulted the injured on his head. He submits that as far as the applicants – Deepak and Santosh are concerned, they are stated to have assaulted the injured with wooden logs and the applicant Parubai is stated to have pulled the injured's hair and instigated the accused. He submits that it is not stated as to on which part of the body, the applicants – Deepak and Santosh assaulted with wooden logs.

5 Learned counsel has tendered affidavit-cum-undertaking of the applicant-Deepak Shelke, duly affirmed before the Circle Jailor, Nashik Road Central Prison and affidavit-cum-undertaking of the applicant-Santosh Shelke, duly notarised before the Notary. Both the affidavits-cum-undertakings are taken on record. In the said affidavits-cum-undertaking, the applicants have stated that if they are released on bail, they will not commit or will not indulge in any crime, in future.

6 Learned APP opposes the application. He submits that the applicant - Deepak has antecedents.

7 A perusal of the evidence of the injured i.e. PW 3-Harish Shergil shows that the incident took place at the spur of a moment and that in the said incident, both the applicants got wooden logs and assaulted Harish; co-accused-Parubai Shelke held the injured by his hair; and co-accused-Vicky Khicchi pulled out a knife from his pocket and assaulted the injured on his head, right armpit and back and also again assaulted the injured with a stone. The evidence of Dr. Dadhich (PW 5) shows that the injured had several multiple CLW and stab injuries i.e. stab wound on right side of upper back of size 8 cm x 2 cm x 1 cm, bone deep; stab wound on right side of para-spinal region near lumbar spine of size 3 cm x 1 cm x 0.5

muscle deep and incise wound on frontal aspect of scalp of size 6 cm x 2 cm muscle deep. The stab injuries are stated to have been caused by co-accused – Vicky, with a knife. The applicants – Deepak and Santosh were on bail pending trial. The applicants have also filed the affidavits-cum-undertakings, having regard to their earlier antecedents that they will not commit any offence in the future.

8 Having regard to what is stated above, the application is allowed and the applicants' sentences are suspended and they are enlarged on bail, pending the hearing and final disposal of their appeal, on the following terms and conditions :

ORDER

(i) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- each, with one or two sureties in the like amount;

(ii) The applicants shall report to the trial Court, once in two months on the day/date specified by the trial Court, till their appeal is finally disposed of;

(iii) The applicants shall not contact or threaten the

complainant, witnesses or any person concerned with the case;

(iv) The applicants shall keep the trial Court informed of their current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time;

(v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9 The application is disposed of accordingly.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.