

VISHWANATH
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

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**CRIMINAL INTERIM APPLICATION NO.1722 OF 2021
IN
CRIMINAL APPEAL NO.13 OF 2021**

Rajendra Dinkar Karande

... Applicant

Vs.

State of Maharashtra

... Respondents

Mr.Vaibhav R. Gaikwad for the Applicant

Mr.S.S. Hulke, APP, for Respondent – State

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.**

DATED: DECEMBER 1, 2021

P.C.:

1. This Application is preferred under section 389 of the Code of Criminal Procedure to suspend the sentence and enlarge the applicant/original accused No.2 on bail till the disposal of the appeal. In Sessions Case No.79 of 2018 by the impugned judgment and order dated 16th October, 2020 passed by the learned Additional Sessions Judge, Kolhapur, the applicant and co-accused Vijay have been found guilty of the offences punishable under sections 302, 324, 323, 504 and 506 read with

section 34 of the Indian Penal Code (for short, 'Penal Code') for having committed the murder of Dhanaji and also for having assaulted Sakhubai and Namdev by dangerous weapons.

2. The learned Counsel appearing for the applicant urged that the role attributed to the applicant is minor in nature. The applicant had not at all assaulted the deceased. Allegedly, the applicant assaulted Sakhubai and Namdev, while they attempted to rescue Dhanaji, who was assaulted by accused No.1 Vijay by means of a bamboo stick. The applicant Rajendra was on bail during the pendency of the trial. While releasing the applicant on bail, during the pendency of the trial, this Court had considered the distinct roles attributed to accused No.1 Vijay and accused No.2 Rajendra. Since the hearing and disposal of this Appeal would take considerable time, the applicant deserves to be enlarged on bail by suspending the sentence, submitted the learned Counsel for the applicant.

3. The learned Counsel for the applicant took us through the impugned judgment and the depositions of witnesses. It was urged that the injured witnesses Sakhubai and Namdev had not sustained any grievous injury. In the absence of the allegation that

the applicant Rajendra assaulted Dhanaji as well, the learned Sessions Judge committed a manifest error in roping in the applicant Rajendra by invoking the provisions contained in section 34 of the Penal Code. In fact, there was no prior meeting of minds of the accused.

4. We have carefully considered the aforesaid submissions. The learned Sessions Judge, in paragraph 32 of the impugned judgment, has ascribed adequate reasons to indicate that the applicant Rajendra did share common intention with accused No.1 Vijay. The said finding is based on the appraisal of the evidence of eye witnesses Namdev, Sakhubai and Amit. The learned Sessions Judge, in paragraph 46 of the impugned judgment, further recorded that initially, when the first altercation took place, accused No.1 Vijay was unarmed. However, at the time of the core occurrence, accused No.1 Vijay as well as applicant Rajendra came to the scene of occurrence armed with sticks. There is evidence to indicate that while the initial blow was given by accused No.1 Vijay to the deceased and the latter fell down, the applicant Rajendra who was also armed, assaulted Sakhubai and Namdev by means of bamboo stick. This simultaneous action, in

the opinion of the learned Sessions Judge, was in pursuance of the prior meeting of minds of the accused. In our view, the learned Sessions Judge has arrived at a justifiable conclusion that the death of the deceased was caused in furtherance of the common intention of the accused Vijay and Rajendra. It is pertinent to note that but for the assault inflicted by the applicant on Rajendra, the witnesses Sakhubai and Namdev would have rescued the deceased.

5. In the aforesaid view of the matter, we are not persuaded to agree with the submission on behalf of the applicant that since the applicant Rajendra had not assaulted the deceased Dhanaji, he could not have been convicted for the offence punishable under section 302 of the Penal Code. Hence, we are not inclined to suspend the sentence and release the applicant on bail during the pendency of the appeal.

6. However, having regard to the facts and circumstances of the case as well as the situation in life of the applicant Rajendra, we grant liberty to the applicant Rajendra to move for suspension of sentence and release on bail, in the event the appeal is not decided within a period of two years.

7. With the aforesaid clarification, the application is rejected.
8. Hearing of Criminal Appeal No.13 of 2021 stands expedited.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)