

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1934 OF 2021

IN

CRIMINAL APPEAL NO.633 OF 2021

Bhaskar Shivram Shingade and Ors... Applicants/Appellants
(Original Accused in S.C. No.240/2017)

v/s.

The State of Maharashtra .. Respondent
(Original Complainant)

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Mr. Aniket Ujjwal Nikam, a/w. Mr. Aashish I. Satpute, Mr. Piyush Toshnival, Mr. Vivek Arote and Mr. Amit Icham, for the Applicants.

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

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**CORAM: NITIN JAMDAR &
G.A. SANAP, JJ.**

DATE : 23 SEPTEMBER 2021.

P.C:-

This application has been made for releasing the Appellants/Applicants on bail. The Appellants have challenged the judgment and order passed by the learned Additional Sessions Judge-4 Nashik, dated 23 July 2021, whereby the learned Additional Sessions Judge has convicted the Appellants for the offence punishable under

Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each (Rupees Ten Thousand each only) and in default of payment of fine to suffer simple imprisonment for six months.

2. The Additional Sessions Judge found the Appellants guilty of committing murder of deceased Govind on 22 April 2015. In the bail application, it is the case of the Appellants that there is no cogent and concrete evidence to establish the guilt against them. According to them, the learned Additional Sessions Judge has not properly considered the evidence. It is further stated that no purpose would be served by keeping them behind bars for years together during the pendency of the appeal.

3. We have heard the learned Advocate for the Appellants and the learned APP for the State. We have gone through the record and proceedings.

4. Shri Aniket Nikam, the learned Advocate for the Appellants, submitted that the perusal of the evidence in entirety would show that the offence under Section 302 of the IPC has not been made out. The learned Advocate pointed out that before the incident, the deceased Govind had inflicted two blows on the head of the Appellant Jayram with koyta. The learned Advocate pointed out

that Jayram and his brothers complained to the father of the deceased and the father of the deceased had advised them to lodge a report against the deceased Govind. The learned Advocate submitted that the report was lodged against the deceased Govind by the accused Jayram. The learned Advocate, on the basis of the evidence on record, submitted that the deceased Govind was an aggressor. The learned Advocate submitted that the alleged incident of assault on the deceased by the Appellants occurred within 30 minutes from the assault by the deceased Govind with koyta on the head of Jayram. In the submission of the learned Advocate for the Appellants, the offence made out in this case at the most would be the culpable homicide not amounting to murder. The learned Advocate, in order to substantiate his submissions, took us through the evidence.

5. The learned APP submitted that the learned Additional Sessions Judge has recorded the reasons in support of his findings. In the submission of the learned APP, the evidence on record does not permit at this stage to accept the submissions advanced by learned Advocate for the Appellants and to enlarge the Appellants on bail.

6. We have given thoughtful consideration to the submissions. We have minutely perused the evidence adduced by the prosecution and the judgment passed by the learned Additional Sessions Judge. It can be seen on perusal of the evidence that 30 minutes before the incident, the deceased Govind had inflicted two

blows on the head of the Appellant Jayram with koyta. It is the case of the prosecution that the Appellants, thereafter, beat the deceased with sticks and, as a result of the injuries sustained by him, he died. In the evidence, P.W.No.1, the father of the deceased, has stated that in the morning at 6.00 a.m., the Appellant Jayram met him and told him that the deceased Govind had given him two blows with koyta. It has come in the evidence of P.W. No. 6 that in the morning at about 5.30 a.m., the deceased Govind had assaulted the accused Jayram on head with koyta under the influence of liquor. It is seen that this aspect has not been considered by the trial court. In view of the facts and circumstances and the submissions advanced by the learned Advocate for the Appellants, we are convinced that this is a fit case to grant bail to the Appellants. No purpose would be served by keeping the Appellants behind bars. The hearing of the appeal would take its own time. Therefore, we are inclined to accept the submissions advanced by the learned Advocate for the Appellants.

7. Hence following order:

ORDER

- (i) Criminal Application is allowed.
- (ii) The substantive sentence imposed upon the Applicants by the Additional Sessions Judge, vide judgment and order

dated 23 July 2021 in Sessions Case No.240 of 2017 is hereby suspended.

- (iii) The Appellants/Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each and sureties in the like amount forthwith, if not required in any other crime.
- (iv) The Criminal Application stands disposed of.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)