

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 192 OF 2021

IN

CRIMINAL APPEAL NO. 128 OF 2021

Mohd. Ersad Mohd. Akhtar and others

...Versus...

State of Maharashtra through PSO, P.S. Civil Lines, Tq. & Distt. Akola

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for the applicants/appellants
Shri I.J. Damle, A.P.P. for respondent/State

CORAM : N.B.SURYAWANSHI, J.

DATE : 04/05/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. This is an application under Section 389 of the Code of Criminal Procedure seeking suspension of substantive sentence of imprisonment. The applicants/appellants being original accused Nos. 2, 4, 5 and 6 are convicted by the learned Sessions Court, Akola in Sessions Trial No. 46/2011 for the offences punishable under Sections 143, 147, 148 and Sections 307 and 336 r/w Section 149 of the Indian Penal Code and they are ordered to undergo rigorous imprisonment for a term of seven years and to pay a fine of Rs. 5000/- each, and in default of payment of fine to suffer simple imprisonment for five months.

3. The applicants alleged to have assaulted the witnesses with the help of pipes and sticks. However, no pipes or sticks were recovered at the instance of the applicants. The assault on the informant (PW.1) was by original accused No.1 - Sk. Sheru @ Aasif Sk. Rajoddin. The witnesses who were allegedly assaulted by the applicants have received simple injuries like abrasion etc.

4. During trial, the applicants/appellants were on bail and they have not misused the facility of bail. The sentence being a short term sentence, in view of the decisions of the Hon'ble Apex Court in the cases of ***Bhagwan Rama Shinde Gosai and others vs. State of Gujarat, AIR 1999 SC 1859 and Kiran Kumar Vs. State of Madhya Pradesh, 2001 AIR SCW 5130***, the applicants deserve to be released on bail. Hence, the following order :

- (i) The criminal application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicants by the learned Additional Sessions Judge, Akola in Sessions Trial No. 46/2011 is hereby suspended on the applicants furnishing P.R. Bond in the sum of Rs. 15000/- each, with one solvent surety in the like amount and the applicants depositing the fine amount in the Trial Court, if not already deposited.
- (iii) Criminal application is disposed of.

JUDGE