

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 CRIMINAL APPLICATION NO. 695 OF 2022
IN
CRIMINAL APPEAL NO. 145 OF 2022

1. Sachin s/o Vikram Yele
2. Tukaram s/o Vikram Yele ... Applicants

Versus

The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO.694 OF 2022
IN
CRIMINAL APPEAL NO. 146 OF 2022

Ankush Somnath Yele ... Applicant

Versus

The State of Maharashtra ... Respondent

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Advocate for Applicants : Mr. Sudarshan J. Salunke
APP for Respondent-State : Mr. S. D. Ghayal
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 16th MARCH, 2022**

PER COURT:-

1. Pending criminal appeal No. 145 of 2022 and criminal appeal no. 146 of 2022 preferred against the judgment and order of conviction dated 8.2.2022 passed by the Additional Sessions Judge, Bhoom, District Osmanabad in Sessions Case No. 8 of 2019, convicting thereby the applicants original accused Nos. 3, 4 and 9 for the offences punishable under Sections 302 r.w. 149 of IPC, 307 r.w. 149 of IPC, 324 r.w. 149 of IPC, 323 r.w. 149 of IPC, 506 r.w. 149 of

IPC and Sections 143, 147 and 148 of I.P.C., the applicants [original accused no.3 Sachin Vikram Yele and original accused no.4 Tukaram Vikram Yele] have preferred criminal application no. 695 of 2022 and the applicant [original accused no.9 Ankush Somnath Yele] has preferred criminal application no. 694 of 2022, for suspension of substantive part of the sentence and for bail.

2. Learned counsel for the applicants in both the applications submits that though there are allegations about formation of an unlawful assembly and in prosecution of the common unlawful object of the said assembly, deceased Manoj was murdered, however, the allegations have been made mainly against accused No.7 Vikram. Learned counsel submits that there are eye witnesses to the incident and according to them, original accused No.7 Vikram has given a blow of axe on the head of deceased Manoj. Learned counsel submits that so far as the applicants are concerned, though there are allegations about the weapons stick, wooden log of spade etc. possessed by them, however, it is not clear from the prosecution evidence as to whom they have extended beating. Learned counsel submits that as per the postmortem report, deceased Manoj had only one injury on occipital region of his bone and that has resulted into his death. Accused No.7 Vikram is the author of the said injury. Learned counsel submits that injured witness P.W. Apparao and P.W. Birmal have sustained simple injuries. P.W. Lahu, who is another injured eye witness, has sustained injuries. However, there is

only one grievous injury on his head and the other injuries on the non vital parts of his person. Furthermore, it is also not clear from his evidence as to which of the accused has caused him the said injury. Learned counsel submits that it is also difficult to understand from the prosecution evidence that the applicants before the court had knowledge that accused No.7 Vikram was likely to give blow of axe on the head of deceased Manoj and was intending to eliminate him. Learned counsel submits that the applicants were on bail during trial.

3. Learned A.P.P. has strongly resisted both the applications on the ground that there are injured eye witnesses to the incident and there is clear evidence about formation of an unlawful assembly. Learned A.P.P. submits that the trial court has convicted the applicants and other accused persons with the aid of Section 149 of I.P.C. Learned A.P.P. submits that the liability under Section 149 of I.P.C. is constructive liability and the prosecution has proved that the applicants were members of the unlawful assembly. In view of the same, the applicants are also liable for the act of other members of the assembly. Learned A.P.P. submits that apart from the ocular evidence, there is also circumstantial evidence against the applicants and they are not entitled to be released on bail.

4. We have carefully gone through the evidence of the injured eye witnesses P.W. Apparao, P.W Birmal and P.W. Lahu.

5. Though there are allegations about formation of unlawful assembly, however, it appears that a single blow had been given on the head of deceased Manoj by accused No.7 Vikram. We have carefully gone through the postmortem report. It appears that deceased Manoj had sustained only one injury i.e. in the form of CLW over occipital region with fracture of occipital bone. The cause of death is also 'shock due to intracranial hemorrhage due to head injury'. Deceased Manoj had not sustained any other injury. So far as the injured eye witnesses are concerned, even though they have sustained injuries, and particularly the injured eye witnesses P.W. Lahu is concerned, though he has sustained fracture injury, however, he has not ascribed any specific role to the present applicants. It is not clear from his evidence as to which of the accused person/s has / have caused injuries to him. It further appears that during the course of quarrel, accused No.7 Vikram had given a blow of axe on the head of deceased Manoj. Though there are allegations that accused No.7 Vikram had given a blow of axe on the leg of P.W. Lahu, however, he has only sustained simple injury on his leg. The applicants before us were on bail during trial. Thus, considering the entire evidence as discussed above, we are inclined to release the applicants on bail by suspending the substantive part of the sentence to their extent. Hence, we proceed to pass the following order:-

O R D E R

- I) Criminal application No. 695 of 2022 (Sachin s/o Vikram Yele and another v. The State of Maharashtra) and criminal application No. 694 of 2022 (Ankush s/o Somnath Yele v. The State of Maharashtra) are hereby allowed.
- II) Pending criminal appeal No. 145 of 2022 and criminal appeal no. 146 of 2022, the substantive part of the sentence passed against the applicants in criminal application no. 695 of 2022 and criminal application no. 694 of 2022, vide judgment and order of conviction dated 8.2.2022 passed by the Additional Sessions Judge, Bhoom, District Osmanabad in Sessions Case No. 8 of 2019 is hereby suspended till disposal of the appeals and till then, applicant no.1 original accused no.3 Sachin s/o Vikram Yele, applicant no.2 original accused no.4 Tukaram s/o Vikram Yele in criminal application no. 695 of 2022 and the applicant original accused no.9 Ankush s/o Somnath Yele in criminal application no. 694 of 2022 be released on bail by furnishing personal bond of Rs.20,000/- each with one solvent surety each of the like amount.
- III. Both the criminal applications are accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)**(V. K. JADHAV, J.)**