

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 CRIMINAL APPLICATION NO. 947 OF 2022
IN APEAL/202/2022

1. RAJENDRA MAHADEO YELE
2. HANUMANT MAHADEO YELE
3. MAHADEO LIMBA YELE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Salunke Sudarshan J.
APP for Respondent-State : Mr. S. D. Ghayal
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 25th MARCH, 2022**

PER COURT:-

1. Pending Criminal Appeal No. 202 of 2022 preferred against the judgment and order of conviction dated 08.02.2022 passed by the Additional Sessions Judge, Bhoom, District Osmanabad in Sessions Case No. 8 of 2019, convicting thereby the applicants-original accused Nos. 5, 6 and 8 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, and Sections 506, 143, 147 and 148 of IPC, the applicants-original accused nos. 5, 6 and 8 have preferred Criminal Application No. 947 of 2022 for suspension of substantive part of the sentence and for bail.

2. Learned counsel for the applicants 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 and stones 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 witnesses 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 counsel further submits that, on the similar set of allegations, the co-accused persons i.e. accused nos. 3, 4 and 9 have been granted bail by this court by common order dated 16.03.2022 passed in Criminal Application No. 695 of 2022 in Criminal Appeal No. 145 of 2022 and Criminal Application No. 694 of 2022 in Criminal Appeal No. 146 of 2022 and in view of the same, the present applicants are also entitled to be released on bail on the ground of parity.

4. Learned A.P.P. has strongly resisted the application 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 IPC. Learned APP submits that the liability under Section 149 of IPC 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 APP 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.

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

6. 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 '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 witness 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 leg of

PW Lahu, however, he has only sustained simple injury on his leg. The applicants were on bail during trial. Thus, considering the entire evidence as discussed above, and also the fact that on similar set of allegations accused nos. 3, 4 and 9 have been granted bail by this court, we are inclined to release the present applicants also on bail by suspending the substantive part of the sentence to their extent. Hence, we proceed to pass the following order:

ORDER

I. Criminal Application No. 947 of 2022 is hereby allowed .

II. Till disposal of Criminal Appeal No. 202 of 2022, the substantive part of the sentence passed against the present applicants vide judgment and order of conviction dated 08.02.2022 passed by the Additional Sessions Judge, Bhoom, District Osmanabad in Sessions Case No. 8 of 2019 is hereby suspended and till then, applicant no.1 Rajendra Mahadeo Yele (original accused no.5), applicant no.2 Hanumant Mahadeo Yele (original accused no.6) and applicant no.3 Mahadeo Limba Yele (original accused no.8) be released on bail by furnishing personal bond of Rs.20,000/- each with one solvent surety each of the like amount.

III. The Criminal Application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)