

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

952 CRIMINAL APPLICATION NO.1259 OF 2022
IN
CRIMINAL APPEAL NO. 273 OF 2022

SHANTABAI @ SHESHKALABAI W/O GANESH KADAM
AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Deshpande Jagdish V
APP for Respondent: Mr. A V Deshmukh
Advocate for Assist to APP : Mr. S S Jadhavar

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CORAM:SARANG V. KOTWAL & BHARAT P.DESHPANDE, JJ.
Dated: June 29, 2022

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PER COURT :-

1. Appeal is already admitted.
2. This is an application for bail pending Appeal. All the applicants were on bail during the trial.
3. Heard Mr. Deshpande, learned counsel for the applicants, Mr. Deshmukh, learned APP for respondent State and Mr. Jadhavar, learned counsel for first informant.

4. The incident is dated 23.7.2016. On the ground of property dispute, this incident had taken place. It is the prosecution case that, on that day, at about 4.00 p.m. in the evening, the informant, his brothers and father were proceeding from their house. When they crossed the applicants' house, at that time, applicant Shantabai @ Sheshkalabai shouted that informant and his family had come there. Hearing that, accused Ganesh, Gopal and Govind came there. It is alleged that, Gopal gave a blow with knife on the stomach of the informant's father Shivaji, Ganesh gave a blow with knife on the first informant's thigh. The accused/applicant Govind was having an axe. It is alleged that, Shantabai and Radhabai held hands of Shivaji to facilitate this crime. On these basis, son of the deceased Shivaji lodged the FIR. Investigation was carried out. Charge-sheet was filed and all these accused alongwith Gopal faced trial. At the conclusion of the trial, all of them were convicted for commission of the offence punishable under section 302 r/w 149 of the IPC and were sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- each, aaa/-

and in default to suffer R.I. for two months. They were also convicted for commission of the offence punishable under section 307 r/w 149 of IPC and were sentenced to suffer R.I. for five years and to pay fine of Rs.1,000/- each, and in default of payment of fine, to suffer RI for one month. They were also convicted for commission of offence punishable under sections 323, 143, 147, 148 of the IPC and were sentenced to suffer R.I. for five months and to pay fine of Rs.500/-, in default of payment of fine to suffer further R.I. for one month on each count. Accused Ganesh was convicted for the offence punishable under section 504 of the IPC and was sentenced to suffer R.I. for two months and to pay fine of Rs.1,000/-, in default of payment of fine to suffer R.I. for one month. Fine amount was directed to be paid to the informant- Pandhari. They were granted set off under section 428 of the Cr.P.C.

5. Learned counsel for the applicants submits that, they were on bail during the trial and they have not misused said liberty. Incident was the result of civil

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disputes between the parties, and, because of this enmity, the applicants are falsely implicated. In fact, the applicants were assaulted brutally and Ganesh, Govind and Gopal sustained serious injuries, for which separate trial was conducted. Fact remains that, there were serious injuries to these accused Ganesh, Govind and Gopal. This fact was not considered by the learned Judge though medical certificates were produced on record in the statements of the accused recorded under section 313 of Cr.P.C. He submitted that, deposition of independent eye witness is more important and no role is attributed to the applicant Shantabai, Radhabai. Govind's presence is not mentioned by him. Ganesh is alleged to have given blow on thigh of the informant and not the deceased. Learned counsel therefore submitted that the applicants be enlarged on bail.

6. Learned APP, as well as learned counsel for the informant opposed this application. They submitted that, in the evidence of eye witnesses PW-1 informant, PW-9 shows that they have consistently deposed against

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the applicants. They have also attributed overt act to Shantabai and Radhabai of holding the deceased thereby facilitating the assault on him. Even applicant Ganesh had used sharp weapon when causing assault on the first informant.

7. We have considered these submissions. Postmortem notes shows that, the deceased had suffered one severe injury on the abdomen and it was the cause of his death. As far as informant is concerned, PW-1 had suffered stab injury of the size 3x1x2 cm on his left thigh. It was described as 'simple injury.' There is substance in the submission of the learned counsel for the applicants that assault on PW-1, therefore, may not fall within the meaning of section 307 of the IPC considering the simple nature of the injuries suffered by him. As far as injury suffered by deceased Shivaji is concerned, it is specifically attributed to Gopal and not to these other applicants/accused. Evidence of PW-3 assumes importance because he is an important eye witness. He has not deposed that, the applicant

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Shantabai and Radhabai had held the deceased, facilitating assault on him. He has also not spoken about presence of the Applicant Govind. A specific role was attributed to the Applicant Ganesh of assault on PW-1, which as discussed earlier is a simple injury. Taking into account this evidence in particular, in our opinion, the Applicants have made out a case for bail. Hence, the following order.

O R D E R

- I. The application is allowed.
- ii. During pendency and final hearing of the Criminal Appeal No. 273 of 2022, the applicant nos.1- Shantabai @ Sheshakalabai w/o Ganesh Kadam, 2- Radhabai w/o Govind Kadam, 3-Ganesh s/o Yogaji Kadam and 4- Govind s/o Ganesh Kadam are directed to be released on bail on their furnishing P.R. bond in the sum of Rs.25,000/- each, with one or two sureties each in the like amount.
- iii. Application is disposed off.

(BHARAT P. DESHPANDE, J.) (SARANG V. KOTWAL, J.)

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