

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.884 OF 2021

IN

CRIMINAL APPEAL NO. 197 OF 2021

1. Raufabegum @ Gauribi w/o
Mohd. Amirouddin

2. Akbarouddin s/o Mohd. Amirouddin Applicants

Versus

The State of Maharashtra

Respondent

...

Mr. Rajendra Deshmukh, Senior Counsel alongwith
Mr. Rajat Untwal, Advocate for the applicants.
Mr. S.S. Dande, A.P.P. for respondent – State.

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**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 25-02-2022.

ORDER (Per Sandipkumar C. More) :

1. The applicants who are original accused Nos.3 and 4 in Sessions Case No. 41/2016 have filed this application for suspension of their substantive sentence so awarded to them by the learned Additional Sessions Judge-4, Parbhani in the aforesaid sessions case under the impugned judgment and order dated 18.02.2021 and also to release them on bail pending hearing and final disposal of this appeal.

2. Learned trial Court has convicted the present applicants for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- each in default to suffer rigorous imprisonment for two years each. The learned trial Court has also convicted these applicants for the offence under Section 307 of I.P.C. and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5000/- each in default to suffer rigorous imprisonment for one month each.

3. The story of prosecution reflects from the notes of arguments is that these applicants, co-accused and the complainant party were having dispute in relation to some fodder money and returning of PVC Pipes. Thereafter on 13.12.2021 at about 6.30 p.m. two co-accused Raisoddin and Amiroddin alongwith these applicants came to buffalo shed. Co-accused Raisoddin was having knife whereas other co-accused Amiroddin was having sword. Present applicant No.1 was having iron pipe and they started abusing the members of complainant party. Co-accused No.1 Raisoddin stabbed Azharoddin with the help of knife on his abdomen, whereas another co-accused Amiroddin gave sword blow to the stomach of Masiyoddin i.e. father of PW-3. Present

applicant No. 1 had give blow of iron pipe on the head of Azharoddin from backside, whereas present applicant No.2 beat the father of PW-3 with kicks and fists. In the said incident, Azharoddin died, whereas father Masiyoddin of PW-3 got seriously injured.

4. Learned Senior Counsel for the applicants submits that though the involvement of the present applicants is shown by the prosecution, but severe fatal injuries caused to the deceased Azharoddin and injured Masiyoddin were in fact inflicted by the other co-accused Amiroddin and Raisoddin. He further submits that though it has been deposed by PW-3 Shaikh Khizar and his father PW-4 Shaikh Masiyoddin, who is injured in the present case, that the present applicant No.1 gave blow of iron rod on the head of Azharoddin, but the medical evidence does not show any such injury on the head of Azharoddin. Further, the learned Senior Counsel for the applicants submits that the allegations against present applicant No. 2 are only in respect of beatings by kicks and fists. He also submits that both these applicants were on bail during the course of trial before the learned trial Court.

5. On the contrary, learned A.P.P. strongly opposed the application on the basis that specific evidence of eye

witness Shaikh Khizar i.e. PW-3 and injured Shaikh Masiyoddin i.e. PW-4 has come on record indicating the active participation of these applicants in the crime. Moreover, the injured PW-4 Masiyoddin and eye witness PW-3 Shaikh Khizar have specifically stated that the present applicant No.1 had assaulted the member of complainant party with the help of iron rod, whereas applicant No. 2 had beaten PW-4 Shaikh Masiyoddin with kicks and fists. Therefore, considering the serious nature of the offence, learned A.P.P. prayed for rejected of this application.

6. We have carefully gone through the notes of evidence, impugned judgment and other material on record. Admittedly PW-4 Shaikh Masiyoddin who is the injured person in the crime, has stated about the roles played by present applicants which also gains corroboration from PW-3 Shaikh Kizhar who is the son of PW-4 Shaikh Masiyoddin. However, though it is alleged that applicant No. 1 gave blow of iron rod on the head of Azharoddin i.e. the deceased, but the medical evidence is somewhat contrary and as per postmortem report no injury was found on the head of deceased Azharoddin. Further, PW-11 Dr. Sonali Jagad, who had examined PW-4 Shaikh Masiyoddin, found only two stabbed injuries on the abdomen and chest of PW-4 Shaikh

Masiyoddin. Thus, we do not get any support from the medical evidence on record in respect of the allegations against the present applicants or the alleged role played by them i.e. of giving blow on head of Azharoddin with the help of iron rod and of extending beatings with kicks and fists. Therefore, it prima facie appears that the injuries which were caused to the deceased and injured, were in fact inflicted by the other co-accused. It is extremely important to note that during the pendency of trial before the learned trial Court, the present applicants were released on bail, and therefore, considering the above aspects and the role ascribed to the present applicants, we are of the opinion that the present applicants can be released on bail during pendency of this criminal appeal. Hence, we pass the following order.

ORDER

- (i) Criminal Application is hereby allowed.
- (ii) Pending hearing and final disposal of the present criminal appeal, substantive sentence of imprisonment recorded against the applicants by learned Additional Sessions Judge-4, Parbhani in Sessions Case No.41/2016 under the impugned judgment and order dated 18.02.2021, is hereby suspended and till then the applicants are released on bail on executing P.R. bond of

Rs.25,000/- with one solvent surety each in the like amount.

- (iii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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