

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

**CRIMINAL APPLICATION NO.2020 OF 2022 IN
CRIMINAL APPEAL NO.224 OF 2021**

Shailesh s/o Piraji Kasbe

... **APPLICANT**

VERSUS

The State of Maharashtra

... **RESPONDENT**

.....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. A.M. Phule, A.P.P. for respondent – State
.....

**CORAM : R. G. AVACHAT, AND
R. M. JOSHI, JJ.**

DATED : 17th OCTOBER, 2022.

ORDER :

Heard. This is an application for suspension of execution of substantive sentences of imprisonment. The applicant has been convicted by learned Additional Sessions Judge-1, Nanded in Sessions Case No.139/2018, by judgment and order dated 23/2/2021, for the offences punishable under Sections 302 r/w 149, 341 r/w 149, 143 r/w 149, 144 r/w 149, 147 r/w 149, 148 r/w 149 of the Indian Penal Code and sentenced to suffer maximum punishment of imprisonment for life and to pay fine of Rs.1000/-, in default to suffer further R.I. for 3 months. The Criminal Appeal filed by the

applicant has been admitted by this Court.

2. The learned counsel for the applicant would submit that, the case is based on eye witness account of three persons. All the three were chance witnesses. P.W.13 Shankar was one of them. His statement was recorded by investigating officer, one and half month after the incident. Other two witnesses namely P.W.3 Sunil and P.W.9 Amit were friend and cousin of the deceased respectively. Both of them claimed to have witnessed the incidence. None of them intervened to rescue the deceased, nor did they shift the deceased to hospital. When father of the deceased came on the scene, he did not state in his evidence about presence of these two witnesses. According to the learned counsel, both these witnesses were present at the time of funeral of the deceased. Police were present that time. None of them came forward to disclose the police to have had witnessed the incidence. It is only seven days after the incidence, they on their own approached the police and claimed to be the eye witnesses. According to learned counsel, the applicant is in jail for little over four years (including bail period on account of pandemic Covid-19). It will take time for hearing of the appeal. Presence of the witnesses, on the evidence of whom the prosecution relies, is doubtful. The applicant has no

criminal antecedents. He, therefore, urged for grant of the application.

3. The learned A.P.P. would, on the other hand, expressed strong reservations to allow the application. According to him, the deceased suffered eight injuries. Our attention was drawn to Column No.17 of post mortem report. According to him, there were three eye witnesses to the incident. All the three gave graphic details as to how the applicant and others assaulted the deceased. Their evidence is consistent one. The trial Court, on appreciation of their evidence, convicted the applicant herein.

4. Perused the evidence of P.W.3 Sunil and P.W.9 Amit and P.W.13 Shankar. There is no recovery of any incriminating article at the instance of the applicant. Statement of P.W.13 Shankar was recorded one and half month after the incident. We, therefore, do not propose to rely on his evidence for deciding the present application.

5. As regards evidence of P.W.3 Sunil and P.W.9 Amit is concerned, their statements have also been recorded seven days after the alleged incidence. Both these witnesses, according to them, were present at the scene of offence while the police had arrived there. They did not come forward to

inform the police how the incidence took place and who were the culprits. Both of them were present for the funeral of the deceased. Police officials were also present for funeral. That time also these two witnesses did not share anything with the police authorities. Both of them have not intervened to save the deceased, nor did they rush the deceased to the hospital. It is only after seven days of the incidence, both of them, on their own, approached the police and claimed to have witnessed the incidence. When the father of the deceased had reached the scene of offence, he did not state in his evidence about presence of these two witnesses there. Nothing incriminating has been recovered at the instance of the applicant. The applicant is in jail for little over four years (including bail period on account of pandemic Covid-19). It is only during hearing of the appeal finally, the evidence of three eye witnesses could be scrutinised closely so as to find whether they were really present at the scene of offence and witnessed the incidence.

6. It will take at least eight to ten years for the present appeal to come up for hearing by its turn. For all these reasons, we are inclined to grant the application. Hence the order :

ORDER

(i) The Criminal Application is allowed.

(ii) Pending the appeal, the execution of the substantive sentences imposed by learned Additional Sessions Judge-1, Nanded in Sessions Case No.139/2018, by judgment and order dated 23/2/2021 shall stand suspended so far as the present applicant Shailesh Piraji Kasbe and the applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount. Bail before the trial Court.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

fmp/-