

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.2247 OF 2022 IN
CRIMINAL APPEAL NO.334 OF 2022**

Dnyaneshwar s/o Ambadas Jadhav ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent – State
.....

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

Date of reserving order : 30th November, 2022

Date of pronouncing order : 5th December, 2022

ORDER :

This is an application for suspension of execution of substantive sentence of imprisonment. The applicant, along with three others, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5000/-, in default to suffer rigorous imprisonment for six months. All of them had moved an application for suspension

of sentence of imprisonment. The said application came to be withdrawn in September 2021. About 14 months have passed thereafter.

2. The incident dates back to August 2016. The case of the prosecution was that, Bhimrao (deceased) was murdered in the wee hours of 13/8/2016. P.W.1 Sandeep had contacted police headquarters on phone. In the information given by him, he named co-convict Ambadas to have murdered Bhimrao. The said information was said to have not been treated as F.I.R. The learned A.P.P. would submit that, the information was cryptic in nature. As such, one of the prime question to be decided in the appeal is, as to whether the station diary entry made pursuant to the telephonic report made by P.W.1 Sandeep was an F.I.R., wherein only one of the co-convicts has been named.

3. P.W.1 Sandeep, in his oral evidence, claimed to have had seen the applicant and co-convicts to have murdered Bhimrao with an assault with sharp edged weapons. The F.I.R. was lodged by Sandeep at 2.30 p.m. same day, naming the applicant and co-convicts to be the assailants. Here again the question of even 6 hours of delay in lodging of

the F.I.R. becomes a central point of consideration in this appeal.

4. P.W.3 Saheb was not an eye witness to the incident. He claimed to have had seen the applicant and co-convicts passing by hurriedly at the material time. He was present while the police arrived at the scene. He, however, gave his statement on the following day.

5. P.W.4 Venkati's evidence appears to be hear-say. P.W.10 Sham stated in his evidence that, the applicant had come to him by 6.00 in the morning of the fateful day. He informed that, his sister was not keeping well. He, therefore, carried the applicant and his sister to Tembhurni in his auto. According to him, co-convict Ambadas also boarded the auto on the way.

6. The applicant was on bail pending trial. Unlike other co-convicts, there is no recovery at his instance of weapon of assault or blood stained clothes. The appeal is not likely to come up for hearing in immediate future. In the peculiar facts and circumstances relating to the present applicant, we are inclined to grant the application. Needless

to mention, grant of relief to the present applicant may not be a ground of parity for other accused persons since the weapons used in commission of the offence have been recovered at their instance. Hence the order :

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending decision of the appeal, the substantive sentence of imprisonment imposed by learned Additional Sessions Judge, Basmathnagar, by order dated 10/12/2020 passed in Sessions Trial No.49/2016 to stand suspended so far as the present applicant Dnyaneshwar s/o Ambadas Jadhav only, and the present 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.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

fmp/-