

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2283 OF 2022 IN
CRIMINAL APPEAL NO. 559 OF 2022

Arun s/o Kanifnath More

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, Advocate for the applicant.
Mr. P. G. Borade, APP for the State.

WITH
CRIMINAL APPLICATION NO. 1314 OF 2022 IN
CRIMINAL APPEAL NO. 282 OF 2022

Akash alias Gotya s/o Ashok Ghode

Applicant

Versus

The State of Maharashtra

Respondent

Mr. R. S. Deshmukh, Senior Counsel instructed by Mr. D. R. Deshmukh, with Mr. G. A. Kulkarni, Advocates for the applicant.
Mr. P. G. Borade, APP for the State.

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

DATE : 30th NOVEMBER, 2022.

PER COURT :

1. By these applications, convicts-applicants are seeking suspension of substantive sentence awarded to them by judgment

and order dated 5th March, 2022 passed by learned Additional Sessions Judge, Ambad, Dist. Jalna, in Sessions Case No. 63/2021.

2. Learned advocates for the applicants submitted that the evidence on record is not sufficient to connect the applicants with the crime in question and that the learned trial Court has convicted them without considering the fact that the alleged incriminating recoveries from the accused are not duly proved as the panch witness to the recovery has not supported the prosecution. It is submitted that considering the nature of evidence, the applicants have good case on merit for seeking acquittal and hence, substantive sentence awarded to them be suspended.

3. Learned APP opposed the present applications. It is submitted that there is evidence on record to show that for the purpose of ransom, deceased has been killed by the accused. According to him, there is evidence in the form of incriminating recovery of cloths as well as weapon and considering previous demand of ransom by accused, it is not a fit case for suspension of sentence.

4. Prima facie consideration of material on record shows that the case is based on circumstantial evidence and accused are claimed to have been last seen in the company of deceased. Though informant claims that prior to the incident accused Nathsagar and others demanded ransom of Rs.10,00,000/- from deceased Govind however, no evidence is brought on record to that effect. Moreover, inspite of said fact in First Information Report, no suspicion is raised against accused. Statement of Santosh, who has claimed to have seen two accused persons with deceased prior to occurrence of the incident, is recorded by police on 2nd September, 2017. This witness who is friend of father of deceased and hence he not informing about having seen deceased in the company of accused immediately is not acceptable. As far as recoveries are concerned, the independent panch witness has not supported prosecution and his testimony is apparently not worthy of credit. Police had already been to the spot where dead body was found and hence recovery of the rod later in point of time from the same place is doubtful. Considering these aspects of the case, there is reason to believe that applicants have good case on merit. There is no likelihood of present appeals to be taken up for hearing in short period of time and in the

circumstances, they deserve to be enlarged on bail by suspending substantive sentence. Hence the following order :-

ORDER

- I) Both the applications are allowed.
- ii) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is suspended. The applicants be released on bail on their executing of P.R. Bond in the sum of Rs. 15,000/- each (Rs. Fifteen Thousand only) with one surety in the like amount.
- iii) Applicants in both the applications shall not enter Taluka Ambad, District Jalna, till decision of the appeals.
- iv) Bail before the trial Court.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 559 OF 2022

Arun s/o Kanifnath More

Appellant

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, Advocate for the appellant.

Mr. P. G. Borade, APP for the State.

WITH

CRIMINAL APPEAL NO. 282 OF 2022

Akash alias Gotya s/o Ashok Ghode

Appellant

Versus

The State of Maharashtra

Respondent

Mr. R. S. Deshmukh, Senior Counsel instructed by Mr. D. R.

Deshmukh, with Mr. G. A. Kulkarni, Advocates for the appellant.

Mr. P. G. Borade, APP for the State.

CORAM : R. G. AVACHAT &

R. M. JOSHI, JJ.

DATE : 30th NOVEMBER, 2022.

PER COURT :

1. Heard.

2. Admit.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

dyb