

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

**947 CRIMINAL APPLICATION NO. 2446 OF 2021
IN CRIMINAL REVISION APPLICATION NO.140 OF 2021**

**MAHADEO SADASHIV KOKATE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Shri. Abhay Ostwal, Advocate h/f Shri. M. S. Patil, Advocate for
the applicants

Shri. G. O. Wattamwar, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th March, 2022**

PER COURT :-

1. Heard learned counsel Shri. Ostwal for the applicants
for some time.

2. He submits that applicants are convicted under
Sections 147, 148, 324, 504, 506 of the Indian Penal Code. He
submits that learned Judge disbelieved recovery of weapon i.e.
stick but convicted the applicants under Section 324 of the IPC
which is clearly illegal. He submits that in order to record
conviction under Section 324 of the IPC, the weapon has to be a
sharp edged weapon or weapon for shooting, stabbing or cutting
or any instrument which is used as a weapon of offence is likely

to cause death. Learned Trial Court has disbelieved the recovery of axe. He further submits that while recording conviction under Section 504 of the IPC learned Trial Court and Appellate Court failed to consider that specific abuses were not used. So also for recording evidence under Section 506 of the IPC, there has to be evidence to show that alarm was caused to the informant and other injured witnesses. Since this evidence is lacking, conviction cannot be said to be proper.

3. Learned counsel Shri. Ostwal submits that appeal was posted for judgment on 26th August 2021, 3rd September, 2021, 14th September, 2021, 20th September, 2021 and on all these dates applicants and their advocate were present. Judgment was finally pronounced on 27th September, 2021. Unfortunately, on that day applicants were absent. He submits that learned Judge was not right in passing the order of standing Non Bailable Warrant against the applicants.

4. From the record it appears that applicants were present on all these dates except the date of 29th September, 2021 on which date the judgment was pronounced. In this view

of the matter, I am inclined to suspend the substantive sentence. Hence the order.

ORDER

1. Substantive sentence is suspended till the disposal of the revision.
2. Non Bailable Warrant stands stayed.
3. Applicants be released on bail on their furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount. Bail in the trial Court.

[M. G. SEWLIKAR, J.]

ssp