

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3613 OF 2022 IN
CRIMINAL APPEAL NO. 65 OF 2022

1. Vitthal s/o Dajiba Ghyar
2. Namdev s/o Dajiba Ghyar Applicants

Versus

The State of Maharashtra Respondent

WITH
CRIMINAL APPLICATION NO. 3614 OF 2022 IN
CRIMINAL APPEAL NO. 66 OF 2022

Ramprasad s/o Abaji Bhanwar Applicants

Versus

The State of Maharashtra Respondent

Mr. J. V. Deshpande, Advocate holding for Mr. B. N. Magar, Advocate
for the applicants.

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

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

RESERVED ON : 13th DECEMBER, 2022.
PRONOUNCED ON : 16th DECEMBER, 2022.

ORDER : (PER R. M. JOSHI, J.)

1. By these applications applicants/convicts are seeking suspension of substantive sentence and enlargement on bail during the pendency of the appeals.

2. Criminal Application No 3613/2022 has already been withdrawn to the extent of Applicant No. 2 Namdev s/o Dajiba Ghyaar.

3. Apart from the merit, bail is also sought on the ground of parity as the co-convicts Nandabai and Parvatibai were enlarged on bail by suspending their substantive sentence, by order of this Court dated 24th February, 2022.

4. Learned advocate for the applicants submitted that as far as present applicants/convicts are concerned, the role alleged against them is similar to that of the role attributed to the co-convicts who are already enlarged on bail. It is submitted that co-convicts who are already enlarged on bail were also claimed to have assaulted the injured and deceased with stick and hence, there is no reason to deny parity to the present applicants. The attention of the Court is drawn to the statements of witnesses and their testimonies in order to convince that there is no evidence to indicate that appellant

Ramprasad having come to the spot with stick. According to him, on the basis of material evidence on record, these applicants have strong case for acquittal in the appeal and hence, substantive sentence running against them be suspended.

5. Learned APP for the State opposed the said contention by pointing out that the co-convicts were granted bail for the reason that they are female and they were on bail during trial. According to him, considering the nature of incident and the manner in which two persons are killed and one was seriously injured, common object of the unlawful assembly can be ascertained and hence, mere use of stick in the said assault will not be sufficient for the present applicants to get absolved from the liability of out come of incident.

6. At the outset, we need to consider as to whether applicants herein are entitled to seek parity with the co-convicts who were enlarged on bail by this Court. No doubt, some evidence is discussed in the said order however, paragraph No. 6 of the said order shows that what weighs more for grant of bail was that the said applicants are women with no criminal antecedents and they were on bail during the course of trial. Present applicants neither can claim

parity on gender nor they were on bail during trial. Thus, on both counts order of suspension of sentence of co-convicts would not come to any aid for the present applicants.

7. It is sought to be argued that the evidence of informant Ayodhya (PW 1) to large extent is omission as compared with her statement under Section 164 of the Code of Criminal Procedure. However, no omission seems to have been brought on record with regard to her statement recorded by police under Section 161 of the Code of Criminal Procedure. Perusal of evidence of Sanjay (PW 3) who is injured witness shows that Ramparsad, Vitthal and Namdeo came to the spot and they were having sticks, axe and sword.

8. It is pertinent to note that in the incident in question, two persons died with number of injuries caused to them and witness Sanjay was seriously injured. In such circumstances, it is not possible for the injured witness to notice and narrate with perfection each and every piece of evidence attributing role to the number of accused. Sum and substance of evidence of these witnesses is sufficient to show that all applicants had been to the spot of incident with common object pursuant to the unlawful assembly formed by

them, which can be gathered from nature of assault on deceased persons and injured witness. Perusal of testimony of Medical Officer who conducted autopsy on deceased persons shows that the injuries caused to them were by axe, sword as well as stick. Thus, the injuries on the person of the deceased are also caused by sticks which were held by the present applicants. Similarly, the ocular evidence of Sanjay is duly supported by the testimony of Dr. Reddy (PW 16) who has noticed injuries with stick and blunt side of the axe which correspond to the injuries and it can be said with certainty that some of the accused used sticks to cause assault in the said incident.

9. Once prima facie finding is arrived regarding formation of unlawful assembly by accused, which indicates common object of the unlawful assembly, it becomes immaterial to consider the role of members of said assembly independently. Having regard to the number of injuries caused to the deceased, at this stage, we are of the view that participation of present applicants as a member of unlawful assembly indicates they sharing common object of assembly and hence they are not only liable for their own acts but also liable for the acts of co-accused.

10. In the circumstances, we find that this is not a fit case for suspension of sentence of applicants. Hence, both the applications stand dismissed.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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