

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3761 OF 2022 IN
CRIMINAL APPEAL NO. 891 OF 2022

Jabbar s/o Sattar Sayyed

Applicant

Versus

The State of Maharashtra

Respondent

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

Mr. R. V. Dasalkar, APP for the State.

WITH
CRIMINAL APPLICATION NO. 2789 OF 2022 IN
CRIMINAL APPEAL ST. NO. 686 OF 2022

Daud Daulya Babu Shaikh

Applicant

Versus

The State of Maharashtra

Respondent

Mr. R. A. Tambe, Advocate for the applicant.

Mr. R. V. Dasalkar, APP for the State.

WITH
CRIMINAL APPLICATION NO. 2714 OF 2022 IN
CRIMINAL APPEAL NO. 687 OF 2022

1. Hajiali Dastgir Sayyed

2. Anwar Dastgir Sayyad

3. Salim Nazir Sayyad

Applicants

Versus

The State of Maharashtra

Respondent

Mr. S. S. Jadhav, Advocate for the applicants.
Mr. R. V. Dasalkar, APP for the State.

WITH
CRIMINAL APPLICATION NO. 2994 OF 2022 IN
CRIMINAL APPEAL NO. 318 OF 2022

Balu Pandit Suryawanshi Applicant

Versus

The State of Maharashtra Respondent

Mr. A. S. Shelke, Advocate for the applicant.
Mr. R. V. Dasalkar, APP for the State.

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

RESERVED ON : 14th DECEMBER, 2022.
PRONOUNCED ON : 16th DECEMBER, 2022.

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

1. Applicants/convicts are seeking suspension of substantive sentence and enlargement on bail during the pendency of the appeals.

2. Learned advocates for the applicants submitted that the statements of alleged eye-witnesses are recorded after four days of the incident. It is further argued that evidence of Investigating Officer

that he visited the spot every day and no one came forward to claim himself/herself as eye-witness to the incident, shows that the testimonies of eye-witnesses are not trust-worthy. By referring to the evidence of eye-witnesses, it is submitted that not only there are inconsistencies in their statements with regard to the role of the applicants, but it can be gathered from their evidence that some of the witnesses even without knowing the names of accused persons have included the names at the instance of police as admitted in the cross-examination. It is further argued that considering the spot panchanama, there is a doubt about the incident in question having been witnessed from the gap in the door of the premises. On these submissions, applicants claim good case on merit for their acquittal and hence suspension of sentence pending appeal.

3. Learned APP opposed the said contentions by pointing out that the incident in question in which deceased died is spread over for over 3 hours and hence there ought to have been various acts occurred which might have been seen by the witnesses intermittently and hence possibility of causing of inconsistency in their evidence is natural. He submitted that considering the fact that all witnesses were female, there is reason to believe that after mustering courage,

they went to the police and got their statements recorded. According to him, it is not a fit case for enlargement of applicants on bail.

4. As far as testimonies of Sameena (PW 2), Zareen (PW 3), Mayur (PW 4) and Asha (PW 5) are concerned, though they have named the applicants as assailants however, admittedly, their statements were recorded after four days of the occurrence of the incident. Even if latitude is given to them for being ladies they could not gather courage immediately to make statement to police but delay caused in recording their statement has diminished its evidentiary value to considerable extent. Apart from this, it is accepted by Sameena (PW 2) that she did not know the names of the accused persons and the same are included in the statement as given by police. This, therefore, apparently creates doubt about her version with regard to witnessing the incident in question attributing the role to the applicants in the assault.

5. So far as applicants Jabbar Sattar Sayyed, Daud Daulya Babu Shaikh, Balu Pandit Suryawanshi and Salim Nazir Sayyad are concerned, evidence of eye-witnesses is not consistent with regard to their presence as well as role played by them in the assault.

Moreover, there is no evidence brought on record to indicate that these applicants had any reason for thrashing deceased to death and there is absence of motive for them to involve in assault. Identity of Balu is also doubtful as he is named Balu Magar, whereas his name is Balu Suryawanshi. Similarly, name of Jabbar also does not find place in evidence/statement of all witnesses. Thus, at this stage, it appears their participation in assault is not proved satisfactorily and hence they deserve to be enlarged on bail during pendency of appeal.

6. As far as applicant Anwar is concerned, after showing disinclination by this Court to allow his application, learned advocate for the applicant sought leave to withdraw the application and hence, his application stands disposed of as withdrawn.

7. It is the case of the informant that she came to know from her mother-in-law and nephew Aziz Pathan about involvement of applicants in this crime. No doubt, Jaitunbi, mother-in-law of informant is not examined as witness. However, prosecution has examined Aziz Pathan, who candidly deposed about he along with his mother-in-law having gone to the house of appellant Anwar at instance of Hajiali. He further deposed about Hajiali and another co-

accused assaulted deceased in his presence. There is no delay in lodging of First Information Report as well as recording statement of this witness. We, therefore, find no reason to disbelieve his testimony at this stage which shows active involvement of applicant Hajiali in the assault caused on the deceased.

8. Perusal of post mortem notes and testimony of the Medical Officer who conducted autopsy shows that deceased was brutally assaulted by the assailants and at this stage, there is no reason not to believe that applicant Hajiali is one of the assailants. In the circumstances, no case is made out by him for suspension of sentence. In the result, his application deserves to be rejected.

9. In view of the above discussion, following order is passed :-

ORDER

- i) Criminal Applications No. 3761/2022, 2789/2022 and 2994/2022 are allowed.

ii) Criminal Application No. 2714/2022 is partly allowed to the extent of suspension of sentence of applicant Salim Nazir Sayyad. Application to the extent of applicant Hajiali Dastgir Sayyed is rejected.

iii) Criminal Application No. 2714/2022 is disposed of as withdrawn to the extent of applicant Anwar Dastgir Sayyad.

iv) Pending appeals, the substantive sentence of imprisonment is suspended to the extent of applicants Jabbar Sattar Sayyed, Daud Daulya Babu Shaikh, Salim Nazir Sayyad and Balu Pandit Suryawanshi. They be released on their furnishing P.R. Bond of Rs. 15,000/- each (Rs. Fifteen Thousand each) with one solvent surety each in the like amount.

v) Bail before the trial Court.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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