

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3273 OF 2021

IN

CRIMINAL APPEAL NO. 681 OF 2021

Nandabai w/o Atmaram Bhawar

Applicant

Versus

The State of Maharashtra

Respondent

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Mr. R.N. Dhorde, Senior Counsel i/b

Mr. V.R. Dhorde, Advocate for the applicant.

Smt. P.V. Diggikar, A.P.P. for respondent – State.

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CORAM : **V.K. JADHAV AND**
SANDIPKUMAR C. MORE, JJ.

DATE : 24-02-2022.

ORDER (Per Sandipkumar C. More) :

1. The applicant i.e. original accused No.9 is seeking suspension of her sentence awarded in the impugned judgment and order of conviction dated 29.11.2021 passed by the learned Additional Sessions Judge-2, Hingoli in Sessions Case No. 27/2016 for the offences punishable under Sections 148, 302, 307 and 447 read with Section 149 of the Indian Penal Code ("IPC" for short) and for her enlargement on bail pending hearing and final disposal of the present appeal.

2. According to the prosecution story, the present applicant, other co-accused and original complainant are close relatives and there was dispute between them on account of cultivation of agricultural land. Due to that dispute the present applicant alongwith other co-accused formed unlawful assembly and assaulted the complainant party members namely Ambadas and Uddhav with stick and axe which resulted into deaths of these persons.

3. Learned Senior Counsel for the applicant submits that though it has been alleged by the eye witnesses of the incident that the present applicant was having stick at the time of assault, but those allegations have come on record mostly by omission. Further, the medical evidence on record in respect of the deceased coming through PW-4 Dr. Santosh Premlal Pardeshi indicates that the death of Ambadas was caused due to head injury with multiple injuries and fractures. Further, his evidence also indicates that death of Uddhav was caused due to various incise wounds on head as mentioned in the postmortem report. Learned Senior Counsel also pointed out that though the stick allegedly used by present applicant in the assault was recovered, but not sent for chemical analysis as it had no blood stains. It is also pointed out further that though some of the witnesses have

deposed about the active participation of this applicant in the assault, but the death of deceased persons appears to be resulted mainly due to incise wounds which were caused by sharp edged weapon such as sword. Lastly, he submitted that the applicant, during trial of the aforesaid sessions case, was enlarged on bail by the learned single Judge of this Court. As such, the learned Senior Counsel prayed for release of the present applicant on bail during the pendency of this appeal, after suspension of substantive sentence of imprisonment.

4. On the contrary, learned A.P.P. strongly opposed the application on the ground that there is ocular evidence against the present applicant about her active participation in the assault and for that purpose she is rightly convicted by the learned trial Court. Learned A.P.P. also relied on the judgment of the Hon'ble Supreme Court in the case of ***Manno Lal Jaiswal vs State of Uttar Pradesh and another*** reported in ***2002 SC Online SC 89***, wherein the Hon'ble Apex Court has reversed the order of Allahabad High Court releasing the applicant / accused therein on bail, who is having similar role as that of the present applicant.

5. We have carefully gone through the impugned judgment and notes of evidence. Admittedly, the present applicant has been held guilty for the offences as mentioned above by learned trial Court and convicted accordingly. On perusal of the evidence on record admittedly eye witness namely PW-1 Ayodhya Bhanwar has stated that at the time of incident present applicant was having stick and she actively participated in the assault alongwith other co-accused. However, it has come on record in the cross-examination of this witness that the allegations of assault by this applicant with the stick has come on record by way of omission. Same is the case with another eye witness i.e. PW-3 Sanjay Ambadas Bhanwar. He has also stated in the cross-examination he cannot assign any reason as to why police did not record the fact that Nandabai was holding stick at the time of incident as narrated by him in the chief examination. Further, from the evidence of PW-14 Dr. Santosh Premalal Pardeshi it appears that death of deceased persons was mainly caused by incise wounds to their heads which was possible due to sharp edged weapons like sword and axes.

6. It is extremely important to note that during the trial learned Single Judge of this Court had already enlarged the present applicant on bail holding that there were general

allegations against the present applicant being participated in the crime by assaulting deceased persons Ambadas and Uddhav with the help of stick, but the deceased persons had in fact suffered incise wounds which were possible by sharp edged weapon. Further, the applicant appears to be a woman with no criminal antecedents. Moreover the incident appears to be resulted suddenly on account of dispute in respect of cultivation of agricultural land and accused persons are also close relatives of the complainant party. Though the learned A.P.P. submitted that if the present applicant is released on bail, there may be repeation of similar incident, however, considering the role of the present applicant in the crime as mentioned above and that she was already on bail during the course of trial, we are inclined to release her on bail during pendency of the present appeal, which may take indefinite period for final disposal. Hence, we pass the following order.

ORDER

- (i) Criminal Application is hereby allowed.
- (ii) Substantive sentence of imprisonment recorded against the applicant by learned Additional Sessions Judge-2, Hingoli in Sessions Case No. 27/2016 under the impugned judgment and order dated 29.11.2021, is hereby suspended and the

applicant is released on bail on executing P.R. bond of Rs.20,000/- with one solvent surety in the like amount, during the pendency of this criminal appeal.

- (iii) Criminal Application is accordingly disposed of

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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