

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.448 OF 2022
IN
CRIMINAL APPEAL NO.117 OF 2022

1. Liyakat Yusuf Jamadar
2. Riyaj Yusuf Jamadar
3. Yusuf Umar Jamadar
4. Bapu Parashram Londhe

Applicants

versus

The State of Maharashtra

Respondent

Mr.Prashant P. Jadhav, Advocate for applicants.

Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February 2022

PC :

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.117 of 2022. The applicants are convicted for the offence under Section 304(Part-II), 324 and 504 of Indian Penal Code vide judgment and order dated 11th January 2022 by Additional Sessions Judge, Kolhapur in Sessions Case No.114 of 2010. The applicants are sentenced to undergo imprisonment of seven years, one year and three months respectively on each count.

2. Th FIR was registered on 23rd February 2010. There is dispute with regards to the property by both the sides. The litigation is pending in Court. The incident had occurred on 22nd February 2010. There was quarrel between both sides. It is alleged that accused no.1 gave blow of axe on the hand and accused no.2 assaulted with stick

on back of complainant. The accused nos.1 and 2 assaulted father of complainant with sticks, axe on legs and back. Accused no.3 assaulted mother of the complainant with fist blows on the left eye. Accused no.2 assaulted her with stick on back and forearm. The FIR was registered under Sections 324, 504 of IPC. One of the injured (father of the complainant) has expired on 23rd February 2010. After the incident the injured persons continued to stay in the agricultural fields which is the spot of incident. Th FIR was reported on the next day. Cross case was registered at the instance of applicants for the offences under Sections 324, 325 of IPC.

3. Learned advocate for applicants submitted that the applicants were on bail during trial. There is no misuse of facility of bail. Cross case was registered against opponents. The opponents were tried before the same Court and the case has resulted in conviction for offences under Sections 324 and 325 of IPC. The said accused were sentenced to suffer imprisonment of one year on each count. The said accused had preferred Criminal Appeal No.105 of 2022 before this Court. The appeal has been admitted. Interim Application No.537 of 2022 was preferred by them for suspension of conviction and grant of bail. The said application has been allowed by this Court vide order dated 16th February 2022 and the sentence of imprisonment has been suspended. It is further submitted that there are serious discrepancies in the evidence of witnesses. The applicants are falsely implicated in this case. The evidence does not inspire confidence. The offence was initially registered for minor offence. The death of the victim was not on account of assault. All the injured persons continued to stay for the whole night at the spot of incident. Learned counsel relied upon decision of Supreme Court

in the case of **Kiran Kumar Vs. State of Madhya Pradesh**¹.

4. Learned APP submitted that the offence is of serious nature. The accused were armed with weapons. Accused no.1 had used axe. Specific role has been attributed to all the persons. The father of complainant was assaulted with weapons by accused. He died on next day. The Trial Court has given benefit to accused by convicting them for the offence u/s.304(Part-II) of IPC. The accused were tried for the offence u/s.302 of IPC. There is sufficient evidence to prove the charge against applicants. The version of eye witnesses cannot be disbelieved. The evidence of injured is required to be considered. Learned APP has relied upon decision of Supreme Court in case of **Suresh Sitaram Surve Vs. State of Maharashtra**².

5. The incident had occurred on 22nd February 2010. Apparently both sides were involved in the incident of assault. In respect to the FIR registered against applicants initially offences were registered under Section 324, 504 IPC. However, on account of death of one of the injured on 23rd March 2010, the charges were altered to Section 302 of IPC. It is also apparent that both sides were tried for the respective offences. Both the cases were resulted in conviction. The opponents were convicted for the offenses under Sections 324 and 325 of IPC. Their appeal has been admitted and their sentence of imprisonment has been suspended. The applicants have been convicted for the aforesaid offences. Maximum sentence imposed by the Trial Court is for a period of seven years. It is apparent that PW nos.1 and 2 are panch witnesses. Both have turned hostile as they have not supported prosecution case. PW-3 is the eye witness. He

1 (2001)9-SCC-211

2 AIR-2003-SC-344

has referred to the incident of assault. He deposed that after the incident, the complainant and applicants continued to stay at the field in the night. They visited police station on the next day. It appears that immediate medical treatment was not provided to the deceased. PW-4 is mother of PW-3. PW-5 is the driver of tractor. His evidence discloses that one of the appellants was assaulted by other side. They were armed with weapons. Reference is made about stick being used by appellants. He did not see the nature of weapons used by the appellants. He did not notice the injury. PW-5 is panch witness who has not supported prosecution case. PW-6 is wife of complainant and eye witness. PW-11 is medical officer. Taking the stock of evidence adduced before the Trial Court, it is apparent that there was quarrel between both sides and cross cases were registered against each other. The appellants-applicants as well as the opponents are convicted. The applicants were on bail during trial. In the light of aforesaid circumstances, sentence of imprisonment can be suspended. Hence, I pass following order :

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 11th January 2022 by Additional Sessions Judge, Kolhapur in Sessions Case No.114 of 2010 is suspended and applicants are directed to be released on bail on executing PR bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;
- (iii) The applicants are permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall attend Trial Court once in six months on

First Saturday of the month till disposal of the Criminal Appeal;

(v) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;

(vi) In the event of default committed by the applicant in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

MST