

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL SIDE APPELLATE JURISDICTION

INTERIM APPLICATION NO.638 OF 2022
IN
CRIMINAL APPEAL NO. 72 OF 2022

Rajendra Bhagwan Modak
& Another

.. Applicants/
Appellants.

v/s.

The State of Maharashtra

.. Respondent.

Mr. Shailesh Chavan, for the Applicant/ Appellant.

Mr. H. J. Dedhia, APP for the Respondent-State.

CORAM: PRAKASH D. NAIK, J.
DATED : 25th FEBRUARY, 2022.

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PER COURT:

This is an application for suspension of sentence and grant of bail during pendency of criminal Appeal No.72 of 2022.

2 The applicants are convicted vide judgment and order dated 21st December, 2021, passed by the Court of learned Additional Sessions Judge, Baramati, in Sessions case No.116 of 2011.

3 The applicants (original accused nos.1 and 2) are convicted for the offence punishable under Section 304 Part – II of Indian Penal Code (“IPC”, for short) and sentenced to suffer imprisonment of six years. They are also convicted for the offence punishable under Sections 325 and 323 of IPC and sentenced to suffer imprisonment of two years and one month on each count.

4 The case of the prosecution is that on 22nd March, 2011, the accused were involved in assaulting the deceased and injured persons. One of the injured had expired on 23rd March, 2011. The First Information Report was registered for the offences punishable under Sections 302, 326, 323, 143, 147, 148, 149, 504 and 506 of IPC.

5 Learned advocate for the applicants submitted that the applicants were on bail during the trial. Presently, they are in custody from the date of conviction. The FIR was registered after death of victim. The allegations are vague. No specific overtact has been attributed to the applicants. In the N.C. complaint registered prior to registration of FIR, it was not stated that the accused had assaulted with stick. The trial Court has accepted the fact that the prosecution has not established that the assault was by stick, and drawn the inference that the assault was by fist blows. The applicants have not misused the facility of bail.

6 Learned APP submitted that the accused were charged for the offence under Section 302 of IPC. The deceased and other persons were assaulted by all the accused with the common object. The trial Court has however convicted them for the offences under Sections 326 and 302 of IPC and other offences.

7 It is noted that the applicants were on bail during the trial. There is no adverse report about the misuse of the facility of bail. The submissions advanced by the learned advocate for the applicants needs consideration. Although the accused was tried for the offence under section 302 of IPC, for the reasons stated in the judgment they were convicted for the offences, as stated above. The evidence of P.W.1 indicate that all the accused had assaulted with stick. Apparently, it appears that

there is discrepancy with regards to the case of the prosecution about use of stick in assault. Considering all these circumstances, the sentence of imprisonment can be suspended.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.638 of 2022, is allowed;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 21st December, 2021, passed by the Court of learned Additional Sessions Judge, Baramati, in Sessions case No.116 of 2011, is suspended and the applicants/ appellants are directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, each, with one or more sureties in the like amount;
- (iii) Applicants/appellants are permitted to furnish cash bail security of Rs.25,000/-, each, for a period of ten weeks, in lieu of surety;
- (iv) Applicants/appellants shall attend the trial Court once in six months on first Saturday of the month between 11:00 a.m. to 01.00 p.m., till final disposal of Appeal;
- (v) In the event there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and the prosecution is at liberty to move an application for cancellation of bail;

(vi) Interim Application No.638 of 2022, stands disposed of accordingly.

(PRAKASH D. NAIK,J.)