

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2167 OF 2021

IN

CRIMINAL APPEAL NO. 439 OF 2020

NILESH HIRAJI TATHE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

WITH

INTERIM APPLICATION NO.2200 OF 2021

IN

CRIMINAL APPEAL NO. 439 OF 2020

VISHAL BALASAHEB MEMANE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Prashant M. Patil, Advocate for the Applicants.

Mr. A. R. Kapadnis, APP for the Respondent - State.

CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.

DATE : 22nd JUNE 2022

PC. :

1 Heard the learned counsel for the parties.

2 By these interim applications, the applicant therein, seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3 The applicant in both the applications, vide judgment and order dated 13th March, 2020 passed by the learned Additional Sessions Judge, Pune in Atro. Spl. Case No. 39 of 2014, have been convicted and sentenced as under :-

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- each, in default to undergo further rigorous imprisonment for six months each;

- for the offence punishable under Section 364 r/w 34 of the Indian Penal Code to suffer rigorous imprisonment for five years and to pay fine of

Rs.5,000/- each, in default, to undergo further rigorous imprisonment for three months each;

- for the offence punishable under Section 201 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/-, in default, to undergo further rigorous imprisonment for three months each;

- All the substantive sentences were directed to run concurrently.

- The applicants were, however, acquitted of the offences punishable under Section 3(1)(x) r/w 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, under Section 7(1)(d) of the Protection of Civil Rights Act and under Section 37(1)/135 of Bombay Police Act.

4 Learned counsel for the applicants in both the aforesaid

applications submits that there is no material, direct or otherwise, as against the applicants (original accused nos.3 and 4).

5 Learned APP opposes the application.

6 Perused the papers, in particular, the evidence of PW17-Kalinda Ankush Udage (mother of the deceased) and PW18-Shrawan Ankush Udage (brother of the deceased). A perusal of the evidence of both the said witnesses i.e. PW17 and PW18 shows that on the date of incident i.e. on 1st May 2014, at about 3.00 a.m., friends of Manik (deceased), Sagar Khandale (accused no.1) and Satish Bathe (accused no.2) had come to her house alongwith two other friends. According to PW17, accused no.1 Sagar took Manik with him. A perusal of the evidence of both PW17 and PW18 shows that the said witnesses have named Sagar (accused no.1) and Satish (accused no.2) and not the present applicants. Admittedly, no Test Identification Parade has been held to identify the said applicants.

7 Even the identification of the applicants in Court is vague. If, as contended by the learned APP, the applicants were also residing in the same vicinity, then the said witnesses would have known the name of the applicants. We are informed that the applicants are in jail since 2014 i.e. for almost 8 years. The appeal is of the year 2020 and it is likely to take some time before the same comes up for final hearing.

8 Considering the evidence on record qua the applicants, the applications of the applicant are allowed. Accordingly, the applicants' sentences are suspended and they are enlarged on bail on the following terms and conditions :

ORDER

- i) The applicants be enlarged on bail on furnishing PR.Bond in the sum of Rs.20,000/- each, with one solvent surety in the like amount by each of them.
- ii) The applicants shall report to the trial Court, once in three

months on the day/date specified by the trial Court, till their appeal is finally disposed of.

- iii) The applicants shall keep the trial Court informed of their current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9 The applications are allowed in the aforesaid terms and are accordingly disposed of.

10 All concerned to act on the authenticated copy of this order.

(V. G. BISHT, J.)

(REVATI MOHITE DERE, J.)