

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

***CRIMINAL INTERIM APPLICATION NO.2920 OF 2021
IN
CRIMINAL APPEAL NO.538 OF 2021***

Vijay Suresh Gund	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL INTERIM APPLICATION NO.443 OF 2022
IN
CRIMINAL APPEAL NO.569 OF 2021***

1. Suraj Narayan Mane	
2. Bapu Shivaji Kamble	
3. Dilip Gajendra Sonawane	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Keshav Chavan, for the Applicant in IA/2920/2021

Mr. Ujwal R. Agandsurve, for the Applicants in IA/443/2022.

Ms. G. P. Mulekar, A.P.P for the Respondent – State.

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

DATE : 13th JULY 2022

P.C. :

1. Heard learned counsel for the parties.
2. By these applications, the applicants seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of their aforesaid appeals.
3. The applicants in both the aforesaid applications vide Judgment and Order dated 13th May 2021, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.523 of 2014 have been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code (I.P.C) and have been sentenced to undergo imprisonment for life and to pay fine, in default, to suffer further rigorous imprisonment for three months each. The applicants were however acquitted of the offences punishable under Sections 143, 147, 148, 149 of the I.P.C and under Sections 37(1) and 135 of the Maharashtra Police Act.

4. Learned Counsel for the applicants in both the aforesaid applications submit that the only role ascribed to the applicants is that of assault by fist and kick blows to Deepak (deceased). They submit that co-accused – Amit Dhotre is alleged to have assaulted Deepak with a sickle on his person. Co-accused – Amit Dhotre is also alleged to have picked up a big stone and assaulted Deepak with the said stone. They submit that the applicants were on bail pending trial, and that they have not misused or abused the liberty granted to them. They further submit that the applicants cannot be held responsible for the assault by co-accused – Amit Dhotre on the deceased and as such Section 34 of the I.P.C. will not apply.

5. Learned APP opposes the applications.

6. Perused the papers. It appears that deceased – Deepak Sakat was externed by Bibvewadi police. It appears that despite the externment order, Deepak entered the Bibvewadi jurisdiction, when the alleged incident took place. PW2 – Sandip Sakat, the brother of

deceased – Deepak has stated that Ganesh Tupere, Bapu Kamble and Dilip Sonawane were annoyed with his brother. PW2 – Sandip has stated that Deepak was called by Ganesh Tupere, in order to take revenge of murder of Dinesh Tupere, who was murdered by Bilal Shaikh and his accomplice. According to PW2 – Sandip, the incident took place on 9th March 2014 at around 7:30 p.m. when Deepak had come to his locality. He has stated that the applicants and other co-accused were standing behind the house of Bapu Kamble and that suddenly he heard cries of his brother, pursuant to which, he went to the spot. He has stated that he saw the applicant – Suraj Mane having held Deepak and applicants – Bapu Kamble, Dilip Sonawane and Vijay Gund assaulting Deepak with fist and kick blows. He has stated that co-accused – Amit Dhotre, assaulted Deepak with a sickle and when the said sickle fell down from his hand, co-accused - Santosh Sutkar picked up the said sickle and assaulted with the same on Deepak's throat. Co-accused - Amit Dhotre is also alleged to have picked up a big stone and assaulted Deepak with the said stone. He has stated that he, his father and other persons thereafter took Deepak to the

hospital.

7. From the evidence, it appears that the applicants assaulted Deepak with fist and kick blows. Admittedly, the applicants were not armed with any weapon. Whether or not Section 34 of the I.P.C. will apply or whether Amit Dhotre and Santosh Sutkar will be liable for their individual acts, will be considered on a detailed appreciation of evidence, when the appeals are finally heard.

8. Considering the evidence as stated aforesaid and the fact that the applicants were on bail pending trial, the applications are allowed and the applicants sentences are suspended and they are enlarged on bail, pending the hearing and final disposal of their aforesaid appeals, on the following terms and conditions :-

ORDER

- i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;

- ii) The Applicants shall report to the trial Court, once in three months on the day/date specified by the trial Court, till their Appeals are finally disposed of;
- iii) The Applicants shall keep the trial Court informed of his 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.