

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

**INTERIM APPLICATION NO.3452 OF 2021
IN
CRIMINAL APPEAL NO.1073 OF 2021**

1) Suresh Sanjay Patil,
Age 32 yrs., Occu- Service,

2) Shri. Ajit Vasant Patil,
Age-28 yrs, Occu-Agri,

3) Shri. Sanjay Keraba Patil,
Age – 61 yrs, Occu.- Agri,

4) Shri. Vasant Keraba Patil,
Age – 54 yrs, Occu.-Agri,

5) Shri. Sagar Sanjay Patil,
Age – 35 yrs, Occu.Agri.

6) Shri. Vinayak Vasant Patil,
Age- 25 yrs, Occu.-Agri.

7) Smt. Nakusha @ Laxmi Vasant Patil,
Age – 45 yrs, Occu- Household,
All R/o-Kotoli, Tal- Panhala,
Kolhapur.

...Applicants/
Appellants

Versus

The State of Maharashtra

...Respondent

Shri. Anand S. Patil, Advocate for the Applicants/Appellants.
Shri. S.V. Gavand, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 13th JANUARY, 2022.

PER COURT:

1. This is an application for suspension of sentence and

grant of bail during the pendency of Criminal Appeal No.1073 of 2021.

2. The applicants are convicted for the offences punishable under sections 143, 147, 148, 307 r/w 149 of Indian Penal Code and section 324 r/w 149 of IPC. They were sentenced to undergo imprisonment for three months, one year, two years, ten years and two years on each count respectively, vide impugned judgment and order dated 22nd December 2021 convicting the applicant for the aforesaid offences, passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No.20 of 2015 is under challenge in Criminal Appeal No.1073 of 2021.

3. The prosecution case is that on account of dispute between the parties, the applicants had assaulted PW1, PW2 and others. Some of the accused were armed with weapons like spade, iron rod and sticks.

4. Learned Advocate for the applicants submitted that the evidence on record does not establish the offence under section 307 of the IPC. The ocular evidence of the witness and the medical evidence is contradictory. The version of medical officer would indicate that the offence under section 307 of IPC is not made out. The injured persons were initially admitted in the Government

Hospital and they got themselves shifted in private hospital to show that the injuries suffered by them were serious. The injuries suffered by them were not serious and this fact is spelt out in the evidence of the medical officer. The applicants were on bail during the trial and they have not misused the facility of bail. The applicant nos.1 and 7 were granted anticipatory bail by the Sessions court. Applicant nos.2 to 6 were granted regular bail by lower Court when they were in custody for a period of 1 and half month. The sentence of 10 years' imprisonment is arbitrary. Hence, the applicants be granted bail by suspending the sentence of imprisonment.

5. Learned APP submitted that specific role has been attributed to all the accused. There was common object in assaulting the injured persons. Accused no.3 and accused no.4 were armed with weapons. Injuries were on vital part of the body. It is the manner in which the assault has taken place and the vital part of body on which blow of weapon is given which would constitute the offence under section 307 of IPC. The injured persons were hospitalized for a period of about 20 days. There are injuries on parietal region and other parts of the body. The medical opinion indicate that grievous injuries were possible by spade and

iron rod. The offence is of serious nature. The maximum sentence imposed by the trial Court is of 10 years. Hence, bail may not be granted to the applicant.

6. The first information report was lodged against several persons. It is alleged that the accused Nos.2 to 6 were instrumental in assaulting injured PW 1 and PW2 with the help of the weapons like spade, iron rod and sticks. The prosecution has examined Dr. Girish Hiregoudar (PW.11). He had treated the injured persons when they were admitted at Apple Saraswati Hospital, Kolhapur. He stated that there are injuries over the head. PW.1 had suffered injury to the right parietal region and shin and shoulder. PW.2 has suffered the injuries to the left temporal region. He also deposed that if the injured is not treated properly and bleeding continues and infection occurs, rarely death can happen. The injuries are possible if the injured is assaulted by iron bar or spade. In his cross-examination, he stated that the condition of injured had not deteriorated. On the next day, it was improved. He did not see blood oozing from the injuries of the patient. The injured Nilesh had not told him that he had been assaulted by spade, iron rod or axe. All the vital organs of both the patients were within normal limits. When the injured were admitted in I.C.U. nothing indifferent

was noticed.

7. P.W.15 – Dr. Priyanka Yadav has deposed that she had examined the injured person. It appears that initially the injured persons were examined by this witness. She was attached to CPR Hospital, Kolhapur. She had noticed CLW on left parietal region of Nilesh Patil and left and right parietal region caused by blunt weapon. She had also examined other injured persons. In the cross-examination, it was stated that it depends upon the weight and also hard and blunt surface and how and where the person falls to opine where the injuries are possible when the persons falls down.

8. It is not disputed that the applicants were granted bail during the trial. Two of them were granted anticipatory bail. It is not reported that there is misuse of facility of bail granted to them. Whether section 307 of IPC is attracted or not will be decided at the time of hearing of this appeal. It is indeed arguable issue. Considering the factual aspects, sentence of imprisonment can be suspected during the pendency of this appeal. Hence, the following order:-

ORDER

- (i) Interim application No.3452 of 2021 is allowed;
- (ii) During the pendency of Criminal Appeal No.1073 of

2021 preferred by the applicants challenging the judgment and order dated 22nd December 2021 passed by the Additional Sessions Judge, Kolhapur in Sessions Case No.20 of 2015 the sentence of imprisonment is suspended and the 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 security to the sum of Rs.20,000/- each for a period of 8 weeks in lieu of surety;
- (iv) The applicants shall attend the trial Court once in six months on first Saturday of the said month between 11.00 to 1.00 pm during the pendency of the Appeal;
- (v) In the event of two consecutive defaults in attending the trial Court, the said fact be brought to the notice of this Court;
- (vi) Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)