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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 213 OF 2019

IN

CRIMINAL APPEAL NO. 1259 OF 2019

Avinash Rajan Ambekar

Applicant

.. (Org. Accused No. 8)

Versus

State of Maharashtra

.. Respondent

WITH

INTERIM APPLICATION NO. 1370 OF 2020

IN

CRIMINAL APPEAL NO. 1257 OF 2019

Amol Suresh Ghuge

Applicant

.. (Org. Accused No. 2)

Versus

State of Maharashtra

.. Respondent

Mr. Sudeep Pasbola a/w. Ayush Pasbola i/by Rahul Arote for Applicant in IA 1370/2020

Mr. Waqar N. Pathan i/by W.Menezes a/w. Sushrut Desai and S. Anthony i/by Amrish Salunke for the Applicant in IA 213/2019

Mr. S.S.Hulke, APP for the Respondent - State

**CORAM : A. S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 1st August, 2022.

P.C.:

. These Interim Applications are for suspension of sentence and releasing Applicants on bail.

2. Applicants are original accused Nos. 2 and 8 respectively.

Applicants have been convicted under Sections 341, 302 read with 34

of Indian Penal Code (for short, "I.P.C.") and are sentenced to suffer imprisonment for life and to pay total fine amount of Rs.5,500/- each, by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai in Sessions Case No. 527 of 2015 by its Judgment and Order dated 11.09.2019.

3. At the outset, it is to be noted here that, the present case is based on ocular evidence. Mr. Nishad Ahmed Siddique (PW-8) is the sole eye-witness in the present case. In his testimony, he has deposed that, at about 2:00 a.m. he heard some shouts and therefore he saw outside through the broken tin of door of his room. That, two persons had lifted one person and other two-three persons were also standing there. Those persons tried to make the lifted person sit on the bike but he was falling down. One of those persons picked up stone and gave 6-7 blows by it on the said person, who was falling down from the bike. The blows by means of stones were given on the head of said person. There was sufficient street light. PW-8 identified Vishal H. Atkale (accused No.5), Abi i.e. Avinash R. Ambekar (accused No.8) and Amol S. Ghuge (accused No.2) being among such persons. He admitted that, he could not identify the forth person. The deceased has been identified as Afzal by the witnesses.

In his cross-examination, Nishad Siddique (PW-8) has admitted that, he did not inform about the incident which occurred in the wee

hours or intervening night of 15.02.2015 to 16.02.2015 between 2.15 a.m. to 2.30 a.m. to the family members of Afzal or to the neighbours or to the Police. This witness has further admitted that, he did not go to work in the morning of 16.02.2015 as he had not received any intimation for work. That, after the incident he was sleeping in his room till 9:00 a.m. That, he saw outside and found that, there was mob on the spot and police had arrived there. He has further admitted that, Police were present there for 1-2 hours and were making enquiry in the vicinity. That, on 16.02.2015 he met Kurar Police. That, he had met Police Officer Mr. Sawant (PW-25) on 16.02.2015 but the concerned officer did not record his statement on that day. His statement was recorded only on 23.02.2015.

4. Perusal of evidence of the said witness, *prima-facie* creates doubt in the mind of Court about his conduct and behaviour about not reporting the said fact to the Police immediately after the said assault on the deceased in the wee hours of 16.02.2015. It is to be noted here that, *prima facie* it appears that there is no evidence as to who has actually assaulted deceased Afzal with stone on the day and time of the incident.

5. Applicants are in jail since the date of their initial arrest on 18.02.2015 and 22.02.2015 respectively. They have already undergone incarceration of about 7 years as of today.

In view of the above, during the pendency of present Appeal,

substantive sentence imposed upon the Applicants can be suspended and they can be released on bail

6. Hence the following Order:-

- (i) Applicants-Accused be released on bail in Sessions Case No.527 of 2015 arising out of C.R. No. 27 of 2015 registered with D.C.B., C.I.D., Unit XII, Mumbai, on their furnishing P.R. bond of Rs. 25,000/- each, with one or two separate local sureties in the same amount;
- (ii) After their release from jail and till final disposal of present Appeal, Applicants are directed to attend the office of D.C.B., C.I.D., Unit XII, Mumbai, on every first Monday of the month initially for a period of one year and thereafter on every first Monday of every 3rd month, i.e. 4 times in a year.

7. Interim Applications are allowed in the aforesaid terms.

All the concerned to act on the basis of an authenticated copy of this Order.

[MILIND N. JADHAV, J.]

[A. S. GADKARI, J.]

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KILAJE

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by SONALI
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