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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION (APPA) NO.269 OF 2022
IN
CRIMINAL APPEAL NO.210 OF 2022**

**AND
CRIMINAL APPLICATION (APPA) NO.505 OF 2022
IN
CRIMINAL APPEAL NO.412 OF 2022**

**AND
CRIMINAL APPLICATION (APPA) NO.506 OF 2022
IN
CRIMINAL APPEAL NO.413 OF 2022**

**CRIMINAL APPLICATION (APPA) NO.269 OF 2022
IN
CRIMINAL APPEAL NO.210 OF 2022**

Sunil @ Mantu s/o Vinayakrao
Kasdekar, aged about 33 years,
Occupation labour,
R/o Pipaldhari, taluka Athner,
District Betul (M.P.) - 460 220. **Applicant.**

:: V E R S U S ::

The State of Maharashtra,
Through the Police Station Officer,
Police Station Shirkhed, taluka Morshi,
District Amravati. **Non-applicant.**

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Shri P.R.Agrawal, Counsel for the Applicant.
Shri T.A.Mirza, Additional Public Prosecutor for the NA/State.
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**CRIMINAL APPLICATION (APPA) NO.505 OF 2022
IN
CRIMINAL APPEAL NO.412 OF 2022**

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Sumarlal s/o Kalmu Salame,
Age : 58 years, occupation : agriculturist.

2. Paresh @ Parashram s/o
Jivan Sirsam
Age : 31 years, occupation labourer.

No.1 to 2, r/o Sakali, taluka
Bhaisdehi, district Betul (Madhya
Pradesh).

(In Amravati Central Jail) **Applicants.**

:: V E R S U S ::

State of Maharashtra,
Through Police Station Officer,
Police Station Shirkhed, taluka
Morshi, district Amravati. **Non-applicant.**

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Shri A.P.Deshmukh, Counsel for Applicants.
Shri T.A.Mirza, Additional Public Prosecutor for the NA/State.
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CRIMINAL APPLICATION (APPA) NO.506 OF 2022
IN
CRIMINAL APPEAL NO.413 OF 2022

Amarlal s/o Kalmu Salame
Age : 30 years, occupation : agriculturist,
R/o Pipaldhari, taluka Athner, district
Betul (Madhya Pradesh)
(In Amravati Central Jail). **Applicant.**

:: V E R S U S ::

State of Maharashtra,
Through Police Station Officer,
Police Station Shirkhed, taluka
Morshi, district Amravati. **Non-applicant.**

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Shri M.C.Kale, Counsel for Applicant.
Shri T.A.Mirza, Additional Public Prosecutor for the NA/State.

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CORAM : **ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.**
DATE : **24/11/2022**

COMMON JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By these applications, applicants/accused seek suspension of substantive jail sentence and for grant of bail. By judgment and order dated 8.2.2022 passed by learned Additional Sessions Judge, Amravati in Sessions Trial No.82/2018, they were convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for life and to pay fine Rs.10,000/- each and, in default of payment of the fine amount, to suffer simple imprisonment for one year. Applicants Amarlal, Sumarlal, Paresh, and Sunil are accused Nos.1, 2, 3, and 4 respectively. During trial, they were on bail.

2. Heard learned counsel Shri P.R.Agrawal for the applicant (in APPA No.269/2022); learned counsel Shri A.P.Deshmukh for applicants (in APPA No.505/2022); learned counsel Shri M.C.Kale for the applicant (in APPA No.506/2022), and learned Additional Public Prosecutor for the State.

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3. One Bhadu Uike, the deceased, a resident of Pipaldhari, taluka Athner, district Betul, was residing at Riddhapur, taluka Morshi, district Amravati. Incident, as alleged, had taken place on 23.1.2018 at about 6:30 pm when Lalita, the wife of accused Amarlal, had been to weekly market at Riddhapur with Bhadu Uike. Accused Amarlal suspected that Bhadu Uike had taken away his wife. All the accused came at the market place. Accused Nos.2 to 4 caught hold of Bhadu Uike and accused No.1 stabbed him on his abdomen with a knife.

4. Postmortem Report is at Exhibit-64. As per the postmortem report, probable cause of death of Bhadu Uike was due to "Hypovolemic Shock". In order to prove the postmortem, the prosecution examined Dr. Chinmay Yogendra Bujurak as (PW5). The said doctor deposed that injuries on the person of the deceased were of antemortem. He further deposed that injuries were so deep which damaged the liver and due to the same there was blood loss. It is found in his evidence that injuries were possible by knife (Article-C).

5. Besides the medical evidence, the prosecution also relied on evidence of Ijajkhan Noorullakhan as (PW2) and Mangesh Bhauraoji Shelke as (PW3). Admittedly, PW2 Ijajkhan is not eyewitness. According to the said witness, when he reached the

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spot of the incident, he saw a person falling down on earth. PW3 Mangesh is eyewitness to the incident. According to this witness, on 23.1.2018, between 5:30 pm and 6:00 pm, when he had been to the market, he heard a noise and, therefore, he along with PW2 Ijajkhan rushed to the spot and saw that three persons had caught hold a person and fourth one was assaulting that person with a knife. PW3 Mangesh identified accused viz. No.1 Amarlal, No.3 Paresh and No.4 Sunil @ Mantu. The Trial Court relying on evidences of PW2 Ijajkhan and PW3 Mangesh convicted the accused persons.

6. Besides oral evidence, the Trial Court also placed reliance on Chemical Analyzer's Report (Exhibit-136). Perusal of the said Chemical Analyzer's Report reveals "Blood Group-B" of deceased Bhadu Uike. Also, perusal of Chemical Analyzers' Reports (Exhibit 137 and 138) reveals "Blood Group-O" of accused Nos.1 and 2. As per Chemical Analyzer's Report (Exhibit-141), blood, having "Group-B", was found on the knife (Article-C), trouser of accused No.1 and shirts of accused Nos.2, 3, and 4.

7. *Prima facie*, as per the prosecution case, role of accused No.1 Amarlal is of giving blow of knife on Bhadu Uike. Whereas, role of accused Nos.2 to 4 is of caught holding Bhadu Uike.

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8. Having perused relevant material and evidences of witnesses on record, we are of opinion that accused No.1 Amarlal is not entitled for the relief claimed as suspending substantive jail sentence and granting him bail inasmuch as evidence shows that he is an assailant giving stab blow by knife on the vital part of the body of Bhadu Uike, the deceased. The blow was so forceful that Bhadu received internal injury and the injury was so deep damaging his liver and due to that there was blood loss resulting into his death due to "Hypovolemic Shock". As such, we are not inclined to favourably entertain the application by accused No.1 Amarlal for grant of bail.

9. Insofar as accused Nos.2 to 4 are concerned, role attributed to them is that they caught hold Bhadu Uike, the deceased, while accused No.1 Amarlal was giving knife blow. As per evidence of the eyewitness, no overt act is attributed to them. During trial also, they were on bail. The only material against them is that they are identified by the eyewitness during evidence and blood stains are found on their clothes. Considering the role of accused Nos.2 to 4 and they were on bail during trial, their applications can be considered in their favour.

10. In this view of the matter and in view of role of accused No.1 Amarlal and accused Nos.2 to 4, Sumarlal s/o Kalmu Salame,

.....7/-

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Paresh @ Parashram s/o Jivan Sirsam, Sunil @ Mantu s/o Vinayakrao Kasdekar, we pass following order:

ORDER

(1) Criminal Application (APPA) Nos.269 and 505 OF 2022 are allowed.

(2) Criminal Application (APPA) No.506 OF 2022 by Amarlal s/o Kalmu Salame is rejected.

(3) The execution of the judgment and order of sentence dated 8.2.2022 passed by learned Additional Sessions Judge, Amravati in Sessions Trial No.82/2018 convicting and sentencing accused Nos.2 Sumarlal s/o Kalmu Salame, accused No.3 Paresh @ Parashram s/o Jivan Sirsam, and accused No.4 Sunil @ Mantu s/o Vinayakrao Kasdekar stands suspended pending disposal of their criminal appeals.

(4) Accused Nos.2 Sumarlal s/o Kalmu Salame, accused No.3 Paresh @ Parashram s/o Jivan Sirsam, and accused No.4 Sunil @ Mantu s/o Vinayakrao Kasdekar be released on bail on they executing a P.R.Bond in the sum of Rs.25,000/- by each of them with one solvent surety of the like amount by each of them.

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(5) The Bail Bonds to be executed before learned Judge below.

(6) During pendency of Criminal Appeal Nos.210 and 412 of 2022, Accused Nos.2 Sumarlal s/o Kalmu Salame, accused No.3 Paresh @ Parashram s/o Jivan Sirsam, and accused No.4 Sunil @ Mantu s/o Vinayakrao Kasdekar shall attend the Trial Court once in a three month and preferably on every first Monday of first week of the month starting from 5.12.2022.

(7) Since application by accused No.1 Amarlal s/o Kalmu Salame for suspension of substantive jail sentence and for grant of bail is rejected, he be taken into custody.

(8) All accused persons are directed to remain personally present before this Court at the time of final hearing of criminal appeals.

With these observations and directions, criminal applications are disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

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