

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.493 OF 2023
IN APEAL/424/2018
WITH APEAL/424/2018
WITH APEAL/432/2018 WITH APEAL/456/2018

RAJENDRA @ RAJESH S/O. MAHADEV BAHIR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Pande Balraj Prakash
APP for Respondent - State : Mr. A. V. Deshmukh
...

CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.

DATE : MARCH 06, 2023.

ORDER :-

. Present application has been filed for suspension of sentence under Section 389 of the Code of Criminal Procedure by original accused No.2. He has been convicted for the offence punishable under Sections 302, 323, 324 read with Section 149, 143, 147, 148 of Indian Penal Code by learned Additional Sessions Judge, Ahmednagar on 10.05.2018 in Sessions Case No.265 of 2014.

2. Heard learned Advocate Mr. Balraj P. Pande for the applicant and learned APP Mr. A. V. Deshmukh for the respondent - State.

3. It will not be out of place to mention here that co-accused Raghunath Sahebrao Bahir had filed Criminal Application No.01866 of 2018 and Sandip Ganpat Bahir had filed Criminal Application No.02543 of 2018. By a detailed order passed by this Court on 26.09.2018 (Coram : T. V. Nalawade and Smt. Vibha Kankanwadi, JJ.), the said application under Section 389 of the Code of Criminal Procedure filed by them came to be rejected and, at that time, this Court had considered the entire evidence. As regards that order dated 26.09.2018 one of the member of this Bench (Smt. Vibha Kankanwadi, J.) was party. Thereafter, co-accused Somnath Uddhav Bahir had filed Criminal Application No.1402 of 2020 for suspension of his substantive sentence and by order dated 25.08.2020, this Court rejected the said application. Even at that time also, the entire evidence was considered.

4. This Court has considered that the evidence before the Trial Court was based on direct evidence as well as circumstantial evidence. Note has also been taken regarding litigation between the families. However, when there are eye witnesses, the FIR was promptly lodged and also the fact that the Trial Court had segregated the evidence as against each of the convicted accused and according to the role attributed and proved it appears that *prima facie* the sentence has been imposed. Though the learned Advocate for the

appellant is now trying to submit that the role of the present appellant is different from co-accused and he want to demonstrate as to how the FIR is based on concocted story, yet those points can be considered at the final stage. But at this *prima facie* stage already this Court has expressed its opinion. Under such circumstance, Criminal Application No.493 of 2023 stands rejected.

5. Appeals to come up as per its turn.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm