

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.696 OF 2022
IN APPEAL/168/2021**

1. Rayakya s/o. Vaharya Padvi
Age: 42 years, Occu.: Nil.
2. Datkya s/o Vaharya Padvi
Age: 37 years, Occu.: Nil,
Both R/o. Khai, Tq. Akkalkuwa,
Dist. Nandurbar. ..Applicants

VERSUS

- . The State of Maharashtra
Through Police Inspector,
Police Staion Molgi,
Tq.Akkalkuwa, Dist.Nandurbar. ..Respondent

...

Advocate for Applicants : Mr.Avinash R. Borulkar
(Appointed through Legal Aid)
APP for Respondent : Ms.VS.Choudhari

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**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 16th June, 2023
PRONOUNCED ON : 7th July, 2023**

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. By instant application, applicants are seeking suspension of sentence as well as grant of bail during pendency of Criminal Appeal No.168 of 2021.
2. Perused the record. It seems that both the applicants were tried by

the learned Additional Sessions Judge, Shahada, Dist.Nandurbar in Sessions Case No.69 of 2014 on the charge of commission of offence under Section 302 read with 34 of the Indian Penal Code (IPC). Vide impugned judgment and order dated 14-03-2018, the learned trial Court has convicted both the applicants and awarded imprisonment for life and fine of Rs.5,000/- each.

3. Heard both the sides.

4. With the able assistance of both sides we have gone through the evidence adduced by prosecution in support of its case. The gist of prosecution case was that, on account of land dispute, deceased Jaysing and deceased Pratap questioned accused persons for cultivating the land. It is stated that on 16-07-2014 at around 10:00 to 11:00 a.m. both the accused mounted assault on Jaysing by means iron rod (*Pahar*) and a big stick respectively on his head. When Pratap intervened, both the accused assaulted Pratap by iron rod (*Pahar*) and a big stick respectively on his head. It has come on record that both deceased Jaysing and deceased Pratap fell unconscious on the spot itself. Initially, they were taken to Rural Hospital, Molgi and thereafter, to Civil Hospital, Nandurbar, from where they were shifted to New Civil Hospital, Surat. It seems that both deceased succumbed to injuries on 17-07-2014 and 18-07-2014 respectively. Autopsy Doctor on conducting post mortem opined that their deaths were

on account of head injury. Wife of Jaysing set law into motion and lodged report on the strength of which Crime No.39 of 2014 was registered with Molgi Police Station, Dist.Nandurbar for the offence punishable under Sections 307, 447, 504, 506 read with 34 of the Indian Penal Code. After death of Jaysing and Pratap, offence under Section 302 read with 34 came to be added. Investigation was carried out and after its completion, accused were charte-sheeted.

5. Now in favour of relief of suspension of sentence and bail, learned Advocate for the applicants would submit that prosecution has adduced only evidence of close relatives and there is no other independent witness. That evidence of so called eye witnesses is also inconsistent as to which of the accused was armed with which article. Therefore, case of prosecution is not free from doubt. That they are convicted by order dated 14-03-2018 by learned Additional Sessions Judge, Shahada. Appeal has been preferred against said judgment and order and it will take sufficiently long time for conclusion and hearing of the appeal. Therefore, he prays for suspension of sentence and grant of bail during pendency of the appeal.

6. While opposing the above relief, learned APP would submit that offence is serious. Assault is by means of deadly weapon like iron rod (*Pahar*) and a big stick and that too on vital part like head. That since assault, both the deceased were unconscious and they died within two

days. There is direct eye witness and therefore, learned APP prays for rejection of the application.

7. We have considered the evidence in the light of nature of application in the hand. It transpires that assault was made by both the accused on deceased Jaysing and deceased Pratap in the background of ownership and possession of the land. Direct eye witnesses suggest that when both the deceased went to question accused persons about cultivating their land, it is alleged that both the applicants herein used iron rod (*Pahar*), which is of heavy metal and a big stick respectively. Heads are targeted apart from other parts of body. Direct evidence shows that both the injured fell unconscious and succumbed to the injuries one after another on 17-07-2014 and 18-07-2014.

8. Admittedly, both the accused were not on bail during the trial. Taking into account such nature of allegations, we are not in favour of considering the relief of suspension of sentence or grant of bail. Hence, following order :

ORDER

- i) Application stands rejected.

(ABHAY S. WAGHWASE)
JUDGE

SPT

(SMT. VIBHA KANKANWADI)
JUDGE