

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.738 OF 2023
IN CRIMINAL APPEAL NO.141 OF 2023

1. Bhaskar Bhujangrao Navpute
Age: 48 years, Occu.: Agri.,
2. Ram @ Rambhau Baburao
@ Babasaheb Navpute
Age: 25 years, Occu.: Agri.,

Both R/o. Ghardon,
Tq. And Dist. Aurangabad.

.. Applicants

Versus

The State of Maharashtra

.. Respondent

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Mr. Satej S. Jadhav, Advocate for applicants.
Mr. S. J. Salgare, APP for the respondent – State.

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

DATE : 19th June, 2023.

ORDER :-

. Present application has been filed for suspension of sentence by original accused Nos.4 and 5, who have been convicted by learned Additional Sessions Judge, Aurangabad on 27.01.2023 in Sessions Case No.104 of 2022 after holding them guilty of committing offence punishable under Sections 302, 307 read with Section 149 of Indian Penal Code.

2. Heard learned Advocate Mr. Satej S. Jadhav for the applicants and learned APP Mr. S. J. Salgare for the respondent – State. With the able assistance of learned Advocate for the applicants and learned APP, we have gone through the evidence, which was before the learned Trial Judge.

3. At the outset, it is to be noted that as per the prosecution story the target of the accused persons was P.W.5 Vikram and it is stated that the accused persons had gone to his house around 8.00 p.m. on 26.06.2021. It appears that around 7.00 p.m. on the same day, one of the accused i.e. Ravi Navpute had given a phone call to Deepak Navpute and asked him as to why the tractor was taken from his field. At that time, Deepak had handed over the phone call to P.W.1 Gorakh and then there was talk between him and accused Ravi Navpute, still it appears that the accused had gone to the house of Vikram. It has come on record that P.W.1 Gorakh and P.W.5 Vikram reside separately, but in the same village. It has also come on record that the deceased is the father of P.W.1 and P.W.5 residing in the third house in the same village. It is then stated by P.W.1 Gorakh and P.W.5 Vikram that the accused persons had firstly assaulted P.W.5 and after hearing the noise when P.W.1 Gorakh went there, he was assaulted. The assault was on their head. Then P.W.1 Gorakh says that after he received the assault, he went from that place running towards his house and there, their father requested the accused persons not to assault all of them, but accused persons

assaulted deceased with iron rod, iron locking pin (locally called as 'शिवळा') and wooden log. After became unconscious, he was taken to police Station and then by giving Yadi he was brought to Ghati Hospital, Aurangabad, but he was then declared dead. It is then stated that applicant No.1 had assaulted the lady members of the family and he was under the influence of liquor at that time.

4. It has come on record that the deceased had suffered paralytic attack and according to the defence, he was unable to move. The learned Advocate appearing for the appellants is laying hands on the contradictions and omissions and submits that the present applicants, even as per the testimony of the eye witnesses, never went to the place where deceased was allegedly assaulted. The injured have received simple injuries. Except the family members and interested witnesses, nobody else has been examined by the prosecution to bring home the guilt of the accused. The present applicants were on bail throughout the trial. Since the appeal is admitted, they deserve to be released on bail with this kind of evidence. They are ready to abide by the terms of the bail.

5. Per contra, the learned APP strongly opposed the application and supported the reasons given by the learned Trial Judge. The age of the deceased was 65 years and it is admitted that he had suffered paralytic

attack. In spite of it, he was brutally assaulted. The postmortem report would show that he had received 20 external injuries. To the injured persons also the injuries were on the vital part i.e. head and the weapons those were used are iron rod, iron locking pin and wooden log. Therefore, the evidence that was adduced was sufficient to hold that the present applicants were the members of the unlawful assembly and with their common object, they had attacked the deceased and his family members.

6. At the outset, it is to be noted from the operative part of the judgment that at one place the learned Trial Judge is invoking Section 149 of Indian Penal Code to convict the accused persons and it is used for the offence punishable under Section 302 as well as Section 307 of Indian Penal Code, but at the same time he has acquitted the accused persons from the offences punishable under Sections 143, 147, 148 of Indian Penal Code as well as Section 149 of Indian Penal Code also in clause (2) of the operative order. Another point which tilts in favour of the applicants is that they were on bail throughout the trial. Further, it appears that the accused persons allegedly went to the house of Vikram first and it has come in the cross-examination of P.W.1 and P.W.5 that there are houses in between their houses as well as the house of deceased. Both the injured eye witnesses have admitted that their father had suffered paralytic attack in 2015. Of course, they have denied the suggestion that the father was virtually in

vegetative state. The question has been raised on behalf of the applicants that when the target was PW.5 Vikram and he was being assaulted in front of his house (as Section 452 of Indian Penal Code has not been invoked, it will have to be taken that the incident has taken place in front of the house), then the question is whether there was *mens rea* or common object to assault PW.1 Gorakh and also to commit murder of deceased Manikrao. We are therefore of the view that the case is made out for releasing the applicants on bail by suspending their sentence till the hearing and disposal of Criminal Appeal. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The sentence imposed on the applicant/appellant in Sessions Case No.104 of 2022 by learned Additional Sessions Judge, Aurangabad, is hereby suspended till the hearing and final disposal of Criminal Appeal No.141 of 2023.
- III) The applicants/appellants - (i) Bhaskar Bhujangrao Navpute (ii) Ram @ Rambhau Baburao @ Babasaheb Navpute be released on P.R. Bond of Rs.50,000/- each with two solvent surety of Rs.25,000/- each.

IV) The applicants/appellants shall not commit any criminal activity.

V) The applicants/appellants to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date they tender bail papers and, thereafter, the trial Judge to fix dates for their subsequent appearances.

VI) In case of two consecutive defaults on the part of applicants/appellants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant/appellant.

VII) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm