

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

**907 CRIMINAL APPLICATION NO.757 OF 2023
IN APPEAL/156/2023**

Lakhan s/o Pratap Bhosale
Age: 23 years, Occu.: Nil,
R/o. Kawadgan Ghoda,
Tq.Parli, Dist.Beed.

..Appellant/Applicant
(Org. Accused No.2)

VERSUS

The State of Maharashtra
Police Station Georai,
Tq.Georai, Dist.Beed.

..Respondent

...

**WITH
CRIMINAL APPLICATION NO.758 OF 2023
IN APPEAL/157/2023**

Soma s/o Sheru Bhosale
Age: 30 years, Occu.: Nil,
R/o.Ketkat Pangari, Tq.Georai,
Presently residing at Achanak Nagar,
Georai, Tq. Georai, Dist.Beed.

..Appellant/Applicant
(Org. Accused No.1)

VERSUS

The State of Maharashtra
Police Station Georai,
Tq.Georai, Dist.Beed.

..Respondent

...

Advocate for Applicants : Mr.Sohel E. Siddiqui
APP for Respondent-State : Mr.A.M.Phule

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

DATE : 14th June, 2023

ORDER :-

1. Both the applications have been filed for suspension of sentence by original accused nos.1 and 2. In the appeals they

are challenging their conviction in Sessions Case No.10 of 2018 by the learned Sessions Judge, Beed, for the offence punishable under Sections 302, 307, 460, 397, 324 read with Section 34 of the Indian Penal Code, dated 17-01-2023.

2. Heard Mr.Sohel E.Siddiqui, learned Advocate for the applicants and Mr.A.M.Phule, learned APP for the respondent-State.

3. The learned Advocate for the applicants have taken us through the evidence. His main contention is that learned trial Court has not appreciated the evidence properly. Though the informant injured has been examined but from the testimony as well as her own FIR would show that she had not witnessed the incident regarding murder of her parents as well as assault to her sister. Her sister stated to have expired after one year of the incident. In the cross-examination, the informant has stated that the accused had covered their faces. Under such circumstance, how she had identified the accused is a question. The identification parade has been conducted but in view of the said admission, no importance can be given to the identification parade. The recovery of weapon is from open space. The articles, which are alleged to be stolen, have not been recovered from the present applicants. Therefore, there was nothing on

record to connect the applicants to the crime. The applicants have hope of success in the appeals and therefore, they need not be kept behind the bar till their appeals are heard and disposed of which will take long time to decide.

4. Per contra, the learned APP supports the reasons given by the learned Sessions Judge for arriving at the conclusion that the guilt has been proved beyond reasonable doubt. The injured had seen both the accused in her house with arms and they had threatened her. She had sufficient time to see them and then she has identified them in the identification parade. The recovery of the weapons is at the instance of present applicants. There were two instantaneous death and the third after about a year and it is on record that the sister of the informant was in Coma for about a year. So that is also required to be arising from the said incident. Even the informant had received injuries and definitely it would have been with an intention to eliminate her. Therefore, there was sufficient evidence to connect the accused with the crime and the trial Court has rightly held that the guilt is proved beyond the reasonable doubt.

5. At the stage, we are required to consider *prima facie* things just to consider as to whether applicants can be released on bail by suspending the sentence. Here it is not in dispute or rather it

has been proved that the parents of the informant were done to death at the spot and in order to prove the autopsy report, informant has categorically stated in her FIR as well as in the substantive evidence that when she came out after hearing noise, she has seen two persons and those two persons had threatened her. It would be then point of appreciation as to what weightage can be given to her statement given in cross that those persons have covered their faces. The further evidence is that she has identified the accused persons in the identification parade held through the Executive Magistrate. Further evidence is regarding the discovery. Accused Soma has discovered the axe and accused Lakhan has discovered the stick. It has come on record through the medical expert that those two weapons would have caused injuries noted on the person of deceased persons as well as the informant. There appears to be no delay in lodging the FIR. The accused persons were never on bail throughout the trial. Therefore, we do not find this a fit case to release the applicants on bail by suspending the sentence till the appeals are decided. Hence, both the applications stand rejected.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE