

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1283 OF 2023
IN
CRIMINAL APPEAL NO. 252 OF 2023

1. Javed Shaikh Jaan Mahd.
Age : 34 years, Occu. : Driver,
R/o. As above.
2. Athar @ Attu Baig Jafar Baig,
Age : 40 years, Occu. : Driver,
R/o. Dhobi Galli, Sillod, Tq. Sillod,
Dist. Aurangabad.

... Applicants.

Versus

The State of Maharashtra

... Respondent.

...

Mr. Satej S. Jadhav, Advocate for Applicant/Appellant.
Mr. S. D. Ghayal, APP for Respondent – State.

...

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

RESERVED ON : 19th JUNE, 2023

PRONOUNCED ON : 07th JULY, 2023

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

1. Both applicants herein have moved instant application with prayer for suspension of sentence and grant of bail on account of conviction recorded against them in Sessions Case No.336 of 2021 tried and decided by learned Additional Sessions Judge, Aurangabad for commission of offence under section 302 of Indian Penal Code (IPC).

2. Heard learned advocate Mr. Satej Jadhav for applicants and learned APP Mr. S. D. Ghayal for respondent - State.

3. In favour of relief, learned counsel for applicants pointed out that, present applicants are named as accused nos.2 and 3. That, no role is attributed to them except stating that there was scuffle with deceased Shafiuddin. It is pointed out that, in fact there was no grudge or quarrel between present applicants and deceased or complainant party. Learned counsel submitted that main incident allegedly took place between accused no.1 Sadik and deceased and even he alone is shown to be armed with wooden stick. Therefore, applicants ought not to have been impleaded on the strength of such material by invoking section 34 of IPC. It is submitted that there is no material to suggest any common intention. However, learned trial Judge has convicted present applicants along with main accused and therefore, both applicants have also preferred criminal application against the said judgment and order of conviction dated 16.03.2023. Appeal has also already been admitted, however much more time would be required for decision of the appeal. Resultantly, in the light of above submissions it is prayed that, sentence awarded be suspended and applicants be set at liberty as they are ready to abide all conditions imposed by this Court.

4. Opposing the relief, learned APP would point out that from the evidence of direct eye witnesses, it is very clear that applicants had accompanied main accused. There was some instances between deceased and accused at the initial stage, however main accused came armed with article stick, at that time both applicants had accompanied him. Therefore, they had approached to the spot to carryout assault on deceased with common intention. Learned APP pointed out that, there are allegations of both applicants scuffling with deceased. Thus, it is submitted that it cannot be said that there is no role. According to learned APP, there was incidence of death of deceased Shafuddin and therefore, for all above reasons learned APP opposed the relief raised herein.

5. In the light of above submission, we have gone through the evidence on record. Admittedly, there are eye witnesses to the incident. The genesis of the crime seems to be questioning by deceased to main accused Sadik for rash and negligent driving of vehicle while he was standing on the road. It seems from the evidence of prosecution that, there was minor quarrel between main accused and deceased and after 20 minutes or so accused Sadik came along with present applicants. Informant himself speaks about present applicants scuffling with deceased and

thereafter main accused hitting deceased on the head from the backside. Therefore, *prima facie* role attributed to present applicants is scuffling with deceased.

6. Therefore, taking into account the role attributed to the present applicants, it is desirable that available evidence needs to be scanned and re-examined to ascertain whether there was common intention entertained by these applicants. In the light of such circumstances, we are convinced that a case is made out for suspension of sentence and grant of bail.

7. For the aforesaid reasons, following order is passed:

ORDER

(i) Application stands allowed and disposed of.

(ii) The substantive sentence imposed against both applicants in Sessions Case No. 336 of 2021 by learned Additional Sessions Judge, Aurangabad, on 16.03.2023 stands suspended till the hearing and disposal of Criminal Appeal No.252 of 2023.

(iii) The applicants, (i) Javed Shaikh Jaan Mahd. and (ii) Athar @ Attu Baig Jafar Baig be released on P.R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

(iv) The applicants shall not commit any criminal activity.

(v) The applicants shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and thereafter, the trial Judge to fix dates for their subsequent appearance.

(vi) In case of two consecutive defaults on the part of the applicants to remain present before the trial Court, the trial Court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

(vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)