

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

**CRIMINAL APPLICATION NO.1376 OF 2023
IN CRIMINAL APPEAL NO.306 OF 2023**

1. Ganesh s/o. Baban Nimse,
2. Subhash s/o. Trimbak Nimse,
3. Macchindra s/o. Subhash Nimse,
4. Jalindar s/o. Subhash Nimse,
5. Jitendra s/o. Shivaji Nimse,
6. Nanda w/o. Sunil Nimse,
7. Shivaji s/o. Sonyabapu Nimse ..Applicants
Vs.
The State of Maharashtra ..Respondent

Mr.N.B.Narwade, Advocate for applicants
Mr.K.N.Lokhande, APP for respondent assisted by Mr.D.R.Korade,
Advocate for informant

**AND
CRIMINAL APPLICATION NO.1383 OF 2023
IN CRIMINAL APPEAL NO.308 OF 2023**

Kanifnath s/o. Pandharinath Nimse ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.R.R.Karpe, Advocate for applicant
Mr.K.N.Lokhande, APP for respondent assisted by Mr.D.R.Korade,
Advocate for informant

**CORAM : R.G. AVACHAT, J.
DATE : APRIL 17, 2023**

ORDER :-

Heard.

2. These applications have been preferred for suspension of substantive sentences of imprisonment. The applicants have been convicted for various offences, including the offence under Section 307 read with Section 149 of Indian Penal Code. In view of the directions that all the substantive sentences to run concurrently, the applicants have to undergo a maximum sentence of imprisonment for a term of 10 years.

3. Learned APP for the State and Mr.Korade, learned counsel for the informant, took the Court through the evidence on record to indicate all the applicants to have assaulted the informant and all his family members. Reliance on the injury certificates of the victims has also been placed. It is informed that the victim – Nilesh underwent operation. He had to be shifted to the private hospital for better treatment. They, therefore, urged for rejection of the applications.

4. The applicants were on bail, pending trial. One of the applicants is woman. The informant gave his evidence consistent with the allegations in the FIR. There are on record the injury certificates of the victims. It will take time for the appeals to come up for hearing by their turn.

5. The applicant – Kanifnath came with a defence of alibi. According to him, on the given day, he was at his workplace at Shrirampur. The distance between Shrirampur and the scene of the offence, is about 75 kms. He examined a defence witness, the Superintendent of Land Records, to show that the applicant - Kanifnath, on the given day, was on duty. The victim – Nilesh was allegedly assaulted by applicant – Kanifnath on his head with iron rod. The applicant – Ganesh assaulted Nilesh on his head with sword. The injury certificate indicates Nilesh to have suffered only one head injury by sharp weapon. Thus, a case for allowing the application of applicant – Kanifnath, is made out.

6. The other applicants, except Ganesh, have been convicted for the offence under Section 307 of Indian Penal Code and sentenced to suffer 10 years' rigorous imprisonment, only with the aid of Section 149 of I.P.C. The victims to whom the other applicants have assaulted, admittedly, suffered simple injuries. The applicant – Nanda, allegedly, assaulted the mother of the informant with stone. She is said to have suffered dislocation of tooth. The applicant Nanda, being woman, is also granted relief.

7. Learned counsel for the applicant – Ganesh did not press his application for the present. It is observed that the Court has not heard learned counsel for the applicant – Ganesh, at length, and therefore, has not arrived at any conclusion regarding merits of his case for grant of suspension of substantive sentence. The applicant – Ganesh may revive his prayer after a period of six months.

8. Hence, the following order:-

(i) Criminal Application No.1376 of 2023 is allowed, except the application of applicant Ganesh. The application of applicant – Ganesh s/o. Baban Nimse is disposed of as not pressed.

(ii) Criminal Application No.1383 of 2023 is allowed.

(iii) During pendency of the appeals, the substantive sentences of imprisonment to stand suspended. The applicants namely, Subhash s/o. Trimbak Nimse, Macchindra s/o. Subhash Nimse, Jalindar s/o. Subhash Nimse, Jitendra s/o. Shivaji Nimse, Nanda w/o. Sunil Nimse, Shivaji s/o. Sonyabapu Nimse and Kanifnath s/o. Pandharinath Nimse be released on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

[R.G. AVACHAT, J.]

KBP