



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

**CRIMINAL APPLICATION NO. 4044 OF 2022
IN APPEAL/998/2022**

Maroti S/o Piraji Jhagade
Age: 53 years, Occu.: Agril., & Business,
R/o. Chainpur, Tq.Degloor, Dist.Nanded,
A/P. Central Jail, Harsool, Aurangabad.Applicant
(Original Accused No.1)

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station Degloor,
Tq.Degloor, Dist.Nanded.
2. Vijayalaxmi W/o Sanjay Waghmare
Age: 36 yrs., Occu. Labourer,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded.
3. Ishanand S/o Sanjay Waghmare
Age: 14 yrs., Occu.: Education,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded
(Minor U/G of Resp. No.2)Respondents

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WITH

**CRIMINAL APPLICATION NO. 4034 OF 2022
IN APPEAL/999/2022**

1. Ramesh Pundlik Waghmare
Age: 49 yrs., Occu.: Agril.,
2. Sudhakar Nagorao Sonkamble
Age: 48 yrs., Occu.: Agril.

Both R/o. Chainpur, Tq.Degloor,
Dist.Nanded.
A/p. Central Jail, Harsool, Aurangabad.

....Applicants
(Orig. Accused No.4 & 8)

Versus

1. The State Of Maharashtra
Through Police Inspector,
Police Station Degloor,
Tq.Degloor, Dist.Nanded.
2. Vijayalaxmi W/o Sanjay Waghmare
Age: 36 yrs., Occu. Labourer,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded.
3. Ishanand S/o Sanjay Waghmare
Age: 14 yrs., Occu.: Education,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded
(Minor U/G of Resp. No.2)

.....Respondents

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WITH

**CRIMINAL APPLICATION NO. 4050 OF 2022
IN APPEAL/1000/2022**

1. Digambar S/o Piraji Waghmare
Age: 49 yrs., Occu.: Agril.,
2. Dattatray S/o Piraji Waghmare
Age: 54 yrs., Occu.: Agril.,
3. Ashok S/o. Piraji Waghmare
Age: 49 yrs., Occu.: Agril.

All R/o. Chainpur, Tq.Degloor,
Dist.Nanded,
A/p. Central Jail, Harsool,
Aurangabad.

.....Applicants
(Orig. Accused No.2, 3 & 7)

Versus

1. The State Of Maharashtra
Through Police Inspector,
Police Station Degloor,
Tq.Degloor, Dist.Nanded.
2. Vijayalaxmi W/o Sanjay Waghmare
Age: 36 yrs., Occu. Labourer,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded.
3. Ishanand S/o Sanjay Waghmare
Age: 14 yrs., Occu.: Education,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded
(Minor U/G of Resp. No.2)

.....Respondents

.....
WITH

**CRIMINAL APPLICATION NO. 1390 OF 2023
IN APPEAL/721/2022**

1. Namdeo s/o Pundlik Waghmare
Age: 54 years, Occu.: Agriculture,
R/o. Village Chainpur, Taluka Degloor,
District Nanded.
2. Gajanan Namdeo Waghmare
Age: 25 years, Occu. and r/o. as above.
3. Rahul Nagorao Sonkambale
Age: 36 years, Occu. and r/o. as above.
4. Madhukar s/o Nagorao Sonkambale
Age: 42 years,
Occ. and r/o as above.

(All the appellants are at present
in Aurangabad Central Prison,

Harsool, Aurangabad)

.....Applicants
(Orig. Accused Nos.5, 6, 9 and 10)

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Police Station Degloor,
Tq.Degloor, Dist.Nanded.
2. Vijayalaxmi W/o Sanjay Waghmare
Age: 36 yrs., Occu. Labourer,
R/o. Chainpur, Tq.Degloor,
Dist.Nanded.
3. Ishanand S/o Sanjay Waghmare
Age: 14 yrs., Occu.: Education,
R/o. As above
(Minor u/g. Of Resp. No.2)

.....Respondents
(No.1 Prosecution Nos.2 and 3
are PW7 and PW8 respectively
who are awarded compensation
from recovered fine)

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Advocate for Applicant in Criminal Application No.4044/2022 : Mr.Pandurang
M. Gaikawad (absent)

Advocate for Applicants in Criminal Application No.4034/2022 & 4050/2022 :
Mr.Chaitanya C.Deshpande h/f. Mr.Sanket S.Palnitkar

Advocate for Applicants in Criminal Application No.1390/2023 : Mr.Vishal
A.Chavan h/f. Mr.Devang R.Deshmukh

APP for Respondent – State : Mrs.V.S.Choudhari

Advocate for Respondent nos.2 & 3 :Mr.Kedar Warad (Appointed)

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

DATE : 12 DECEMBER, 2023

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

1. Original accused persons have invoked provisions under Section 389 of

the Code of Criminal Procedure (Cr.P.C.) praying to suspend sentence and to grant them bail pending appeals arising out of judgment and order dated 29-07-2022 passed by the learned Additional Sessions Judge, Biloli in Sessions Case No.35 of 2018.

2. All applications are heard at one and the same time and are answered by the learned APP and thereby prayers made are sought to be rejected.

3. After hearing submissions of both sides, it appears that there is no dispute that all applicants were made to face trial for commission of offence under Sections 120-B, 143, 147, 148, 302 read with 149 of the Indian Penal Code (IPC) by Degloor Police Station. Prosecution seems to have launched on the premise that six months prior to incident in question, deceased had allegedly developed his land by using the soil extracted from water tank i.e. after seeking permission from revenue authorities. Prosecution claims that applicant Maroti objected for such permission as well as had issued life threats to deceased if he takes soil from water tank and in that background on 02-06-2018 at around 07:30 a.m. accused persons namely Maroti, Datta, Digambar, Ashok, Ramesh, Namdeo, Gajanan, Sudhakar, Madhukar, Padmakar and Rahul came armed with spade handle, sticks, chilli powder etc. and it is alleged that deceased was assaulted by accused persons. Deceased when was shifted to Government Hospital, Degloor, was examined and thereafter shifted

to Nanded where while undergoing treatment, he succumbed and hence, PW7 Vijayalaxmi, wife of deceased set law into motion vide report Exh.63.

4. In support of its case, prosecution seems to have examined as many as nine witnesses. PW9 Dr.Sunil Baliram Madewad, Autopsy Doctor has conducted post mortem and claimed that he came across 22 injuries which are narrated by him in substantive evidence as well as in post mortem report and therefore, attributed death due to blunt trauma to chest with multiple injuries.

According to him, external, internal and corresponding injuries are sufficient to cause death.

5. In the light of above, we have gone through the record before us. Here we are now only called upon to ascertain whether it is a fit case at all for suspension of sentence and grant of bail by exercising powers under Section 389 of the Cr.PC. There are certain parameters and factors which are required to be borne in mind like probability of appeal being allowed etc. Law to that extent is spelt out in the case of ***Laxman Malhari Sable v. State of Maharashtra; 1997 (2) Mh.L.J. 780.***

6. Keeping the same in mind, we have cursorily gone through the testimonies of so called star witnesses pointed out by learned APP i.e. PW6 Sunita, sister of deceased, PW7 Vijayalaxmi, wife of deceased and PW8

Ishanand, a child witness i.e. son of deceased. They all claim to have eye witnessed the assault on deceased Sanjay. Papers show that there is recovery at the instance of applicants / appellants. It is informed that applicants were not on bail during the trial. Therefore, considering the nature of offence, circumstances in which it took place, the background, nature and number of injuries, we do not consider it a fit case to grant relief as prayed.

ORDER

All Criminal Applications stand rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT