

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2320 OF 2023
IN APEAL/566/2023
AND
CRIMINAL APPLICATION NO.2764 OF 2023
IN APPLICATION NO.2320 OF 2023 IN APEAL/566/2023

1. AVINASH S/O KERBA KURHADE
2. VINOD S/O. SUBHASH SHINDE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Prabhakar N. Nagargoje
APP for Respondent No.1 : Mr. S. B. Narwade
Advocate for informant : Ms. Ashwini A. Lomte
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CORAM : S. G. MEHARE, J.

DATE : 27-07-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the informant.
2. The applicants are seeking suspension of sentence imposed to suffer rigorous imprisonment for five years for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, by the learned Additional Sessions Judge, Ambajogai, District Beed, in Sessions Case No.44 of 2012, dated 26.06.2023.
3. The learned counsel for the applicants would submit that the first informant lodged the complaint that the accused/applicant No.2 Vinod assaulted the injured on his thigh. However, the

injured complained of stabbing knife on his stomach. The counter report was also lodged. However, both cases were decided by the common judgment. One of the accused was also injured. That has not been considered. The complainant in the present case has been acquitted. The complainants were aggressive. This material aspect has also not been considered. A short-term conviction of five years has been imposed. Therefore, the judgment of this Court in ***Laxmibai w/o. Uttam Puri and another versus The State of Maharashtra, Criminal Application No.692 of 2020 in Criminal Appeal No.203 of 2020, dated 05.03.2020***, has been relied upon. Further, he would argue that the injured runs a medical shop. He has a medical shop in the location where there were good hospitals but instead of admitting immediately to the nearest hospital, he preferred to go to Latur. He was operated for the appendix and he had encashed the said situation alleging that the accused assaulted him with a knife on his abdomen. In fact, there were no injuries on his abdomen. The doctor was well familiar with the family of the injured and his family had influence in the locality. Therefore, to keep the control and impression over the people in the locality, a story has been given different colour. The applicants are married. They were on bail during the trial. They never misused bail conditions imposed against them. The legal aspects have not been considered. Hence, sentence may be suspended.

4. Per contra, the learned A.P.P. for the State and the learned counsel for the injured have vehemently argued that taking treatment in the best hospital is no ground to raise doubt on the veracity of the witnesses. Since the incident happened in the evening hours and in crowded, the complainant could not identify the location of the body where the injured was assaulted. Hence, he has mistakenly stated that the accused assaulted on thigh, but the injured is the best witness. He was hospitalized for 3 to 4 days. He was to take a rest for a long time. She read the evidence of the Doctor, the injured and the other witnesses and submitted that since the injured fell down during fleeing away after the incident, the learned Sessions Judge, Ambajogai, has correctly acquitted respondent No.2 and others in the case lodged by the present applicants. The offence is serious and life threatening. The learned Sessions Judge has taken the lenient view though the serious offence punishable with life imprisonment has been proved against the present applicant. She has vehemently argued that considering the gravity of the offence, the applicants do not deserve suspension of the sentence.

5. Perused the impugned judgment and order as well as depositions of the relevant witnesses.

6. Admittedly, the injured was taken to the hospital at Latur and after his admission to the hospital, he had also undergone the

surgery of appendix. The doctor has explained why he performed appendix surgery. *Prima facie*, the evidence of the witnesses and Doctor support the prosecution case that the incident happened. That apart, the counter report is the other circumstance to believe that the incident happened.

7. It is also not in dispute that the accused were bed ridden during the trial. However, it may not be a ground to suspend the sentence.

8. The Hon'ble Supreme Court, in the case of **Kiran Kumar Versus State of M.P., (2001) 9 SCC 211**, has referred to the ratio laid down in the case of **Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421**, in which it was held that "when the a person is convicted and sentenced to a short-term imprisonment, the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned."

9. The ratio laid down by the Hon'ble Supreme Court in the above case is that the prosecution has to point out the exceptional

circumstances to deny the suspension of sentence where the sentence is a short-term sentence.

10. Considering the material on record, it appears that the available evidence needs to be appreciated. The defence of the accused also needs reconsideration. It was a short-term sentence of five years. The trial went on for about 13 years. There were no exceptional or other circumstances to refuse the suspension of sentence. The Courts are overburdened with the appeals of convicts undergoing sentences. There is no possibility of concluding the appeal in the near future. So, considering the length of the trial and the conduct of applicants during the trial, which was not harmful to any of the witnesses or the injured, the Court is of the view that suspension of the sentence till conclusion of the appeal would not cause loss to the prosecution and the injured. Hence, the order:-

- i) Application is allowed.
- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicants, in Sessions Case No.44 of 2012, dated 26.06.2023, by the learned Additional Sessions Judge, Ambajogai, District Beed, to suffer rigorous imprisonment for five years for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, is suspended till conclusion of the appeal.

- iii) Applicants Nos. (1) Avinash s/o. Kerba Kurhade and (2) Vinod s/o. Sbbhuash Shinde be released on bail on furnishing P.B. and S.B. of Rs.50,000/- each, with one solvent surety of like amount.
- iv) Bail before the learned Additional Sessions Judge at Ambajogai, District Beed.
- v) Criminal Application No.2764 of 2023 to assist learned APP stands disposed of.

**(S. G. MEHARE)
JUDGE**

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