



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2677 OF 2023
IN
CRIMINAL APPEAL NO. 485 OF 2023

1. Sudhakar Bankat Ambekar,
Age: 40 years, Occu. : Agri.,
2. Balasaheb Vyankat Ambekar,
Age : 40 years, Occu. : Agri.,
Both R/o. Hipparga, Tq. Ausa,
Dist. Latur. ... Applicants.

Versus

The State of Maharashtra ... Respondent.

WITH

CRIMINAL APPLICATION NO. 2689 OF 2023
IN
CRIMINAL APPEAL NO. 485 OF 2023

- . Shivaji @ Shivshankar Bankat Ambekar,
Age: 32 years, Occu. : Agri.,
R/o. Hipparga, Tq. Ausa,
Dist. Latur. ... Applicant.

Versus

The State of Maharashtra ... Respondent.

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Mr. Satej S. Jadhav, Advocate for Applicants.
Mr. S. D. Ghayal, APP for Respondent - State

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

DATED : 28th NOVEMBER, 2023

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

1. Applicants - convicts for offences under sections 302, 324, 323 read with section 34 of Indian Penal Code (IPC) in Sessions Case No. 55 of 2018 passed by Learned Additional Sessions Judge, Latur have preferred appeal bearing Criminal Appeal No. 485 of 2023 questioning the legality, sustainability and maintainability of the judgment and by way of instant applications have prayed for suspension of sentence and grant of bail during pendency of appeal.

2. Learned counsel for applicants-convicts would submit that, incident in question is said to be fall out of civil dispute, but details of the same have not come on record. According to him, the genesis has not been proved by the prosecution. That, there are allegations of assault by articles like axe, iron pipe and stick. That, almost all injuries are abrasion injuries. Deceased died while undergoing treatment. Applicants have a good case on merits in appeal. That, learned trial court has not considered the defence case in proper perspective and therefore they have every hope of succeeding in appeal. He emphasized that, the role attributed to accused Balu is merely about use of stick. According to him, appeal has been filed recently and it would take a long time for its hearing and decision and till then he prays for suspension of sentence and grant of bail.

3. In the light of above submissions, we have dealt with the papers placed before us. We are at this stage merely dealing with entitlement of applicants bail and suspension of sentence. There is no straitjacket formula or defined set of guidelines regarding considerations to be borne in mind while granting above prayer. However, it is fairly settled that parameters like gravity of the offence and circumstances in which the incident had taken place, nature of injury, weapon used, prospects of succeeding in appeal are some of the factors which are required to be kept in mind while suspending sentence and granting bail.

4. Keeping in mind above aspect, we have *prima facie* gone through the depositions of witnesses in the trial court and we have noticed that alleged occurrence has taken place on 22.6.2018. Learned counsel for applicants has fairly admitted regarding animosity due to civil dispute. Therefore, occurrence seems to have taken place in above backdrop. Informant is the son of deceased Ganu and according to him while he was accompanying his father and they were returning after completing agricultural activity, they were intercepted by accused and assault was mounted in the backdrop of previous dispute of agricultural land. Informant PW1 Balaji has narrated the assault made on his father, initially by applicants Sudhakar, Balu and applicant Shivshankar.

It transpires that, overt act attributed to Sudhakar is use of axe, Shivshankar to be found with iron rod and Balu to be armed with stick. Their roles are spelt out. It seems that after admission of deceased Ganu in the rural hospital while undergoing treatment, he expired.

5. PW3 Dr. Dharmraj Dudde, autopsy doctor, who conducted post mortem has noticed and reproduced as many as 31 injuries on the person of Ganu while deposing in substantive evidence as well as in PM report. Thereby deceased seems to be mercilessly assaulted.

6. Pancha in whose presence recovery has been caused at the instance of accused convicts has also been examined by prosecution. Therefore, there is recovery also.

7. It is informed that accused were not on bail during the trial. Therefore, taking into consideration above discussed material, we do not considered it a fit case for grant of relief as prayed. Hence, we proceed to pass following order :-

ORDER

Both the applications are hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)