

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3009 OF 2022
IN APEAL/658/2022

1. Pritesh Vijay Mankar
Age: 27 years, Occu.: Labour,
R/o. Gokul, Tq. Mahur,
District Nanded.
2. Satish Vijay Mankar
Age: 28 years, Occu.: Labour,
R/o. Gokul, Tq. Mahur,
Dist. Nanded.
3. Devanand Natthu Bhagat
Age: 46 years, Occu.: Business,
R/o. Gokul, Tq. Mahur,
District Nanded.

.. Appellants

Versus

The State of Maharashtra,
Through Police Station, Sindhkhed,
Tq. Mahur, Dist. Nanded.

.. Respondent

...

Mrs. S. G. Chincholkar, Advocate for appellants.
Mr. R. V. Dasalkar, Advocate for the respondent.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : MARCH 06, 2023.

ORDER :-

. Present application has been filed by original accused Nos.1, 2 and 4 for suspension of their sentence imposed by learned Additional Sessions Judge, Nanded on 07.07.2022 in Sessions Case No.168 of 2018

under Sections 302, 307 read with Section 34 of Indian Penal Code and Section 4 punishable under Section 45 of the Indian Arms Act.

2. Heard learned Advocate Mrs. S. G. Chincholkar for the appellants and learned APP Mr. R. V. Dasalkar for respondent - State. With the able assistance of learned Advocate for the appellants and learned APP, we have gone through the material which was before the Trial Court.

3. The appellants – applicants have faced trial for allegedly committing murder of one Anand Keshav Bhagat, who was the father of informant P.W.1 Kiran. The incident of murder had taken place around 4.30 p.m. on 09.09.2018 in Ambedkar Chowk, Gokulgaon, Tq. Mahur, Dist. Nanded. It can be seen from the testimony of P.W.1 Kiran, P.W.2 Sadanand and P.W.6 Budhbhushan that they are the eye witnesses and with some variations, they wanted to say that all these three appellants had assaulted deceased Anand with knife. They had given stab injuries and then P.W.1 Kiran and P.W.6 Budhabhushan had particularly stated that accused No.1 Pritesh had stabbed Anand on his stomach and chest. P.W.2 Sadanand had then stated that accused No.1 Pritesh had assaulted him with knife causing injury to stomach and private part. As regards the testimony of P.W.11 Dr. Kiran Kumar, who had carried out the autopsy, it can be seen that

he has noted about nine stab injuries and two abrasions on the person of Anand. If all these stab injuries which were stated to be possible by dagger (knife), which was shown to him, then we hold that there is *prima facie* case which was considered by the Trial Court against accused No.1. P.W.12 Dr. Mohan Akole is the medical officer, who had examined P.W.2 Sadanand and had found the injury in the nature of penetration and incised wound over pelvic region 2 cm. above the pubic symphysis of size 3 x 1 x 4 cm. This injury can also be said to be attributed to accused No.1 for the offence under Section 307 of Indian Penal Code.

5. As regards accused Nos.2 and 4 i.e. present applicant Nos.2 and 3 are concerned, as aforesaid, it is stated by the eye witnesses that they had also assaulted the deceased with knife, however, the prosecution evidence shows that there is recovery of only one knife that too from accused No.1. The investigating officer has not explained what happened to the knives of accused Nos.2 and 4. Under such circumstance, case is made out to release them on bail by suspending the sentence pending appeal. Whether their role can be considered under Section 34 of Indian Penal Code would be the matter at the end of the appeal and for that purpose, they need not be asked to linger in jail.

6. For the aforesaid reasons, following order is passed :-

ORDER

I) Criminal Application stands rejected in respect of applicant No.1 - Pritesh Vijay Mankar.

II) Criminal Application stands allowed in respect of applicant Nos.2 and 3.

III) The substantive sentence imposed on appellants/applicants in Sessions Case No.168 of 2018 by learned Additional Sessions Judge, Nanded is hereby suspended only in respect of applicant/appellant Nos.2 and 3, till the final hearing and disposal of Criminal Appeal No.658 of 2022.

IV) Applicant No.2 - Satish Vijay Mankar and Applicant No.3 - Devanand Natthu Bhagar be released on P.R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

V) Applicant/appellant Nos.2 and 3 shall not commit any criminal activity.

VI) Applicant/appellant Nos.2 and 3 to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders a bail papers and, thereafter, the trial Judge to fix dates for his subsequent appearances.

VII) In case of two consecutive defaults on the part of applicant/appellant Nos.2 and 3 to remain present before the trial Court, the trial Court to inform this Court about the same, and in that case the prosecution would be at liberty to file an

application for cancellation of the bail granted to applicant/appellant Nos.2 and 3.

VIII) Bail before the Trial Court.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm