



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3254 of 2023
IN
CRIMINAL APPEAL NO. 800 OF 2023

Ajay Dinkar Pisal,
Age : 29 years, Occu. : Nil,
R/o. Vikramnagar, Latur,
Tq. & Dist. Latur.

... Applicant.

Versus

The State of Maharashtra

... Respondent.

WITH

CRIMINAL APPLICATION NO. 3255 OF 2023
IN
CRIMINAL APPEAL NO. 800 OF 2023

Vijay Dinkar Pisal,
Age : 28 Years, Occu. Lab. Assistant,
R/o. Vikramnagar, Latur,
Tq. & Dist. Latur.

... Applicant.

Versus

The State of Maharashtra

... Respondent.

...

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

...

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

DATED : 28th NOVEMBER, 2023

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

1. Instant applications are by both convicts in Sessions Case No. 10 of 2021 for offences punishable under sections 302

and 307 of Indian Penal Code (IPC) praying for suspension of sentence and grant of bail during pendency of appeal preferred by them.

Though both applicants are convicted by way of same judgment, they seem to have preferred distinct applications raising above prayers.

2. In favour of relief, learned counsel for applicants would point out that, above conviction is in absence of cogent, reliable and trustworthy evidence. That, alleged occurrence has taken place on 25.10.2020. According to him, deceased i.e. son of informant went to spend night in the house of his friend namely, Mohit (PW3). That, FIR is lodged on the basis of information of such witness and on the basis of hearsay information. He would further submit that there are allegations that while in the house of PW3 Mohit, there was some telephonic talk between PW3 Mohit and applicant convict Ajay and PW3 Mohit was called to the house and therefore this witness and deceased accordingly went their. It is pointed out that, in fact, Ashok had nothing to do with the alleged relations between PW3 Mohit and the girl. That, applicant Ajay had called his brother applicant Vijay, who came armed with knife and rushed over PW3 Mohit, but when deceased Ashok intervened, it is submitted that, he suffered blow and died. According to learned

counsel, applicants had no intention to kill nor there was any animosity with deceased Ashok. That, electronic evidence i.e. CCTV footage shows otherwise and has also been discarded by learned trial Court.

3. Learned counsel would strenuously submit that, even otherwise, main allegations are against Vijay for using knife, there is no role attributed to applicant Ajay. However, even he is roped in and convicted, and therefore, appeal has been preferred in which there is every hope of succeeding. Lastly, it is submitted that, much more time would be required to hear the appeal and till then it is prayed that relief as prayed be granted.

4. 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 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.

5. Admittedly, here, as pointed out FIR is by father of deceased, who is not a party to the occurrence. On receipt of information from one Suraj Ghute, who is a friend of his deceased son, PW1 Shivaji went and learnt about the occurrence. Deceased Ashok seems to have died due to hemorrhagic shock due to multiple injuries. There is evidence of medico legal expert in the form of PW9 Dr. Dhanraj Dudde, who conducted PM.

6. PW3 Mohit seems to be star witness and also an injured. His evidence *prima facie* shows that alleged occurrence had taken place on the night of 25.10.2020. His evidence suggests that, he was acquainted with a girl taking education along with him and their acquaintance grew into an affair. This witness claims that, it was subsequently revealed that the girl was also talking with applicant convict Ajay and in that backdrop some telephonic talk seems to have taken place between PW3 Mohit, the girl as well as convict Ajay.

7. According to PW3 Mohit, Ajay called him in his house and as deceased Ashok was at his house for a sleepover, deceased also accompanied PW3 Mohit to the house of Ajay and their some incidence seems to have taken place between PW3 Mohit and convict Ajay, who summoned his brother Vijay, who allegedly came

armed with knife during scuffle and tussle took place between Ajay and PW3 Mohit. Deceased tried to intervene and at that time it seems that Vijay, who was armed with knife mounted assault on Ashok, i.e. on throat, chest and thigh. Convict Vijay also inflicted blow on PW3 Mohit with knife.

8. It is tried to be submitted that, there was no intention or motive to kill Ashok. There is no enmity between applicants and deceased, however, unfortunately, on his intervention he has suffered injury. That, even otherwise main role is attributed to Vijay and not Ajay.

9. Evidence of PW3 Mohit unfolds the sequence of occurrence. There is substance in the arguments that only when deceased Ashok intervened, blow was inflicted with knife, but by Vijay and not by Ajay. It also *prima facie* seems that even Ajay has subsequent to the occurrence helped in lifting and shifting deceased to the hospital.

10. Therefore, taking such material into consideration, in our opinion, convict Ajay deserves relief as prayed. However, though convict Vijay had no intention to kill Ashok, taking into consideration the manner of assault, the circumstances in which

the incident took place, nature of injuries, weapon, we are not inclined to extend any relief to such convict and therefore his application deserves to be rejected. Hence, we proceed to pass following order :-

ORDER

- i) Criminal Application No.3254 of 2023 stands allowed and disposed of.
- ii) The substantive sentence imposed against the applicant - Ajay S/o Dinkar Pisal in Sessions Case No.10 of 2021 by learned Additional Sessions Judge, Latur, on 17.08.2023 stands suspended till the hearing and disposal of Criminal Appeal No.800 of 2023.
- iii) The applicant Ajay S/o Dinkar Pisal be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/-.
- iv) The applicant shall not commit any criminal activity.
- v) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and thereafter, the trial Judge to fix dates for their subsequent appearance.
- vi) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in

that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii) Bail before the trial Court.

viii) Criminal Application No.3255 of 2023 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)