

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3336 OF 2023
IN
CRIMINAL APPEAL NO. 812 OF 2023

Anita w/o Sanjay Bhalkar,
Age 43 years, Occ. Agril./Household,
R/o. Ohargaon,
Taluka and District Aurangabad. ... Applicant

Versus

The State of Maharashtra
Through Police Station, Harsul. ... Respondent

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Mr. Spoon G. Bobde, Advocate for the Applicant.
Mrs. V. S. Choudhary, APP for Respondent-State.
Mrs. Rashmi S. Kulkarni, Advocate for the original informant.

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

Reserved on : 03.11.2023
Pronounced on : 07.11.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. The instant application for suspension of sentence and bail is on behalf of convict in Sessions Case No. 153 of 2015 decided by learned Additional Sessions Judge, Aurangabad on 06.07.2023, thereby holding applicant-appellant guilty for offence punishable under Section 302 r/w 34 of the Indian Penal Code [IPC].

2. Learned counsel for the applicant would submit that alleged occurrence is of 14.03.2015. Trial was conducted and concluded on 06.07.2023. Applicant is behind bars for more than eight years. In support of relief of suspension of sentence and bail, learned counsel, apart from placing written notes of arguments on record, would submit that applicant is a lady. There are accusations of assault by means of bamboo stick only. No specific role is attributed to present applicant except allegations of issuing threats to kill and directing her husband to kill deceased Vishwas. It is pointed out that even present applicant came at a later point of time and therefore learned trial court ought not to have held her guilty by invoking Section 34 of IPC. He next submitted that as many as 20 witnesses have been examined and there is no independent witness, rather all are relatives of deceased and therefore, are interested witnesses. The judgment has been questioned by filing appeal, however, as much more time would be required for decision of the appeal and applicant being a lady and being behind bars for more than eight years, he prays for grant of relief of suspension of sentence as well as enlargement on bail.

3. Learned APP for State would oppose by submitting that independent witness PW1 Mangalchand has marked her presence.

She had participated in the assault. That, deceased suffered as many as 39 injuries and he succumbed to the same. Therefore, finding direct eye witness account and death to be homicidal, learned trial court has rightly convicted applicant along with co-accused, who had joined in mercilessly beating deceased. Taking into consideration the nature of offence and the accusations, she prays that relief as prayed may not be granted.

Learned counsel for the informant, who has also preferred appeal against acquittal of accused nos. 2 to 4, also joined in resisting the application and apart from adopting submissions advanced by learned APP, she would submit that applicant was at the spot initially directing her husband to kill deceased. That, PW1 Mangalchand, an independent labour, had attributed assault at her hands also and therefore, when death is shown to be homicidal and it being serious offence, no case is made out.

4. We have heard each side and perused the written arguments placed on record by learned counsel for the applicant. Applicant seems to be wife of main accused Sanjay. Documents show that deceased and accused are neighbours as their lands are abutting to each other. Admittedly there is a civil dispute which is said to be

pending and deceased seems to be beneficiary of injunction order and since then, both families are at loggerheads. Alleged occurrence has taken place on 14.03.2015. Informant seems to be wife of deceased and her sister PW9 Vidya is also examined along with relatives and acquaintances of informant and deceased i.e. PW11 Walmik, PW12 Suresh and PW17 Pravin. Rest are police officials, panchas and medical experts. However, PW1 Mangalchand seems to be an independent witness as he appears to be a labour who was engaged by deceased for digging well. Going by his testimony in the witness box, it is emerging that accused are neighbours of the adjoining land owned by deceased. According to this witness, four to five days prior to the incident in question, main accused Sanjay had issued threats to the labours i.e. this witness and another labour Shivpal, by saying that they should not come to the other side of wire compound.

5. According to him, on 14.03.2015 around 7.00 a.m, when deceased Vishwas came to make payments, at that time, this witness claims that main accused Sanjay was seen initially quarreling with deceased Vishwas and thereafter there was scuffle. This witness has stated that main accused Sanjay was armed with something and this witness saw assault on deceased with bamboo. This witness stated that even he was hit with stone by main accused Sanjay when he tried

to intervene and separate them. Thereafter he stated that wife of main accused Sanjay came there and she also assaulted deceased Vishwas with bamboo and she further uttered that he should be made to stand and then beaten which would be a fun. Present applicant is identified by him to be the said lady and according to him, she also threatened this witness. Later on, a girl aged 16-17 years, a lady and brothers of main accused also came there and all of them mounted assault on deceased and went away and deceased thereafter contacted his relatives and friend, who came and shifted him to the hospital.

6. Fellowman of PW1 Mangalchand, namely, Shivpal has not been examined. Therefore, PW1 seems to be the only eye witness. *Prima facie* informant wife seems to have come after a short while and she has, on receiving information and seeing her husband injured, set law into motion.

7. Having grasped the core of the prosecution case, here, in our opinion, so far as allegations against present applicant are concerned, it is regarding use of bamboo. Going by the sequence narrated by PW1, she seems to have come at a later point of time but has, no doubt, joined others in assaulting deceased Vishwas. There is recovery

of axe and bamboo sticks but axe is said to be possessed and recovered from main accused. Applicant is admittedly a lady. Therefore, taking into consideration the nature of accusations and allegations as regards the applicant, she seems to have used bamboo stick. Conviction is recorded by learned trial court on 06.07.2023. Applicant is in jail from 01.04.2015 i.e. since more than eight years. Taking the above material into consideration, as appeal would take much long time to be heard and decided, we are inclined to grant relief as prayed. Hence, we proceed to pass the following order:

ORDER

- I. The application stands allowed.
- II. The substantive sentence imposed on the applicant in Sessions Case No. 153 of 2015 by learned Additional Sessions Judge, Aurangabad on 06.07.2023 stands suspended till final hearing and disposal of Criminal Appeal No. 812 of 2023.
- III. The applicant Anita w/o Sanjay Bhalkar be released on P.R. of Rs.30,000/- (Rupees thirty thousand only) with two solvent sureties of Rs.15,000/- (Rupees fifteen thousand only) each.

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 she tenders bail papers and thereafter, the trial Judge to fix dates for her subsequent appearances.

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.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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