

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 3559 OF 2022
IN
CRIMINAL APPEAL NO. 795 OF 2022**

1] Saifuddin alias Raja Nuroddin Shaikh
Age: 25 years, Occu: Labourer,
R/o: Near Sangat Rang Mahal,
Nizamoddin Road, Shahaganj,
Aurangabad, Taluka and District
Aurangabad

2] Asif Siddiqui Qureshi
Age: 24 years, Occu. And
R/o. As above

... APPLICANTS
(Orig. Accused Nos. 1 and 2)

Versus

The State of Maharashtra
Through the Officer Incharge,
Doultabad Police Station,
District: Aurangabad

**... NON-APPLICANT/
RESPONDENT**

....
Mr. R. S. Deshmukh, Senior Advocate along with Mr. Govind A.
Kulkarni, Advocate for applicants
Mr. R. V. Dasalkar, APP for respondent - State
....

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

DATE : 14.03.2023.

PER COURT :-

The present application has been filed for suspension
of substantive sentence against the applicants under Section 389

of the Code of Criminal Procedure. Both the appellants were original accused persons in Sessions Case No.208/2017. They have been held guilty of offence punishable under Section 307, 302 read with 34 of the Indian Penal Code by the learned Additional Sessions Judge-6 on 12.09.2022.

2. Heard Mr. R. S. Deshmukh, learned Senior Advocate for the applicants and the learned APP

3. The prosecution story in short is that accused No.1 is the nephew of the deceased and the informant. The informant is the wife of deceased Yusufuddin. There were disputes in respect of the offerings, which Yusufuddin used to get as he was maintaining and looking after the management of Momin Arif Dargah which was stated to be by inheritance. It is then stated that accused No.1 was insisting the deceased that he should give share from the offerings to accused No.1 and his family. In the afternoon of 13.02.2017 when the informant and her husband were in the house, at that time accused No.1 and his brother Azruddin had visited their house and made inquiry about their share from the offerings. However, deceased Yusufuddin gave them understanding that since the litigation is going on, their share would be given after the decision by the Court. The

informant then said that around 3.00 p.m. on 14.02.2017, when she was along with her husband; accused No.1, and his friend accused No.2, went to their house and demanded the share at that moment. When Yusufuddin tried to give understanding, accused No.1 uttered that till the old man is alive, he will not give them share and therefore they should kill him and thereafter both the accused persons took out knives and gave blows on the body of Yusufuddin. When the informant had raised shouts, her brother, brother's wife and sister came to the house of the informant and thereafter both the accused ran away. The deceased was taken to the Government Hospital, Daulatabad and thereafter shifted to Ghati Hospital, Aurangabad.

4. It is the further prosecution story that on 14.02.2017 itself, the F.I.R. was lodged by the informant i.e. wife of deceased and at that time it came to be registered for the offence punishable under Section 307 read with 34 of I.P.C. Yusufuddin then succumbed to the injuries on 27.02.2017 and Section 302 of I.P.C. came to be added.

5. It appears that prosecution examined in all six witnesses to bring home guilt of the accused and relied on various documents. After hearing both the sides and perusing the evidence, the learned Additional Sessions Judge-6, Aurangabad, held the accused persons

guilty for committing offence punishable under Section 307 read with 34 of I.P.C. and sentenced both the accused to suffer R.I. for ten years and pay fine of Rs.1,000/- each, in default, to suffer S.I. for one month. Both the accused persons have been further held guilty of committing offence under Section 302 read with 34 I.P.C. and have been sentenced to suffer R.I. for life and pay fine of Rs.1,000/- each, in default, to suffer S.I. for one month.

6. It appears that the prosecution has examined PW-2 Jubeda, the informant and the sole eye witness and then she has been believed by the learned trial Judge. It is also the prosecution story that PW-6 PSI Dinesh Suryawanshi had also recorded the dying declaration of Yusufuddin on 14.02.2017 and it is stated to be prior in time. We have considered the said dying declaration. *Prima-facie* it can be noted that it has no endorsement by the Medical Officer regarding consciousness and the fitness of the maker of the dying declaration, so also the thumb mark has not been attested. It will have to be then considered as to whether it can be considered in evidence or not, but these are the first impressions about the dying declaration. Even as per the F.I.R. and the examination-in-chief, one Raheman Khan, his wife Shabana and sister Sajeda had gone to the

house of Jubeda after she had raised hue and cry and then both the accused had left. It appears that these three persons have also not been examined by the prosecution. It has been tried to be submitted on behalf of the appellants that PW-2 Jubeda had reason to implicate at least accused No.1 as the dispute in respect of sharing of the offerings was pending and also the fact that Yusufuddin was prosecuted for murdering one Nuruddin. Nuruddin was the father of accused No.1 and then it is stated that Yusufuddin and others were acquitted from those charges. The said fact will have to be gone into, as in the cross examination the further details have not come and therefore the record will have to be considered thoroughly.

7. As regards accused No.2 is concerned, he is stated to be the friend of accused No.1 and it has not come on record that he is related to his family and then whether accused No.2 had the motive to commit the said crime, would be a question and in the cross examination PW-2, Jubeda has stated that she had never seen accused No.2 prior to the incident. No identification parade appears to have been conducted. Therefore, though from the medical evidence it can be certainly said that the deceased had received severe injuries and then succumbed to death resulting in the homicidal death, but still it

will have to be considered as to whether the present accused persons were the author of the crime.

8. It can also be seen from the record that both the applicants were on bail throughout the trial. Therefore, the case is made out for releasing them on bail by suspending the substantive sentence. Hence, following order:

ORDER

- (i) The Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicants/appellants in Sessions Case No.208/2017 by the learned Additional Sessions Judge-6, Aurangabad on 12.09.2022 stands suspended till the hearing and final disposal of Criminal Appeal No.795 of 2022.
- (iii) The applicants i.e. (1) Saifuddin alias Raja Nuroddin Shaikh and (2) Asif Siddiqui Qureshi, be released on P R. Bond of Rs.50,000/- each with two sureties of Rs.25,000/- each.
- (iv) The applicants shall not commit any criminal activity.
- (v) The applicants to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal,

starting from the date they tenders bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.

(vi) In case of two consecutive defaults on the part of the applicants 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 the applicants.

(vii) Though the present order is passed, in appeal the applicants shall not act in any such way which would be detrimental to the witnesses.

(viii) Bail before the trial Court.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

SMS