

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

**CRIMINAL APPLICATION NO.3657 OF 2023
IN APPEAL/456/2018**

**DADA @ ASHOK KISAN BAHIR
VERSUS
STATE OF MAHARASHTRA**

...

Advocate for Applicant : Mr.Joydeep Chatterji h/f. Mr.Balraj Prakash Pande

APP for Respondent : Mr.S.D.Ghayal

Advocate for Respondent no.2 : Mr.R.D.Phatake

Advocate for Appellant in Cri.Appeal No.432/2018 : Mr.A.R.Devakate

...

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

DATE : 25 OCTOBER, 2023

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

1. Original accused no.11 has invoked provisions under Section 389 of the Code of Criminal Procedure (Cr.PC.) praying to suspend sentence and to grant him bail pending appeal arising out of judgment and order dated 10-05-2018 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.265 of 2014.

2. Learned Counsel for the applicant submitted that since judgment and order of conviction, applicant – appellant is behind the bars. He has questioned legality and maintainability of the of impugned judgment by filing appeal before this Court, however, much more time would be required for hearing and decision of appeal. It is submitted that implication of applicant

and his conviction is in absence of cogent, reliable and trustworthy evidence. That there is no incriminating material regarding his participation and role. As many as 28 accused were chargesheeted on allegation of commission of offence under Sections 302, 452, 325, 324, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code (IPC) and under Sections 3, 4 read with 25 of the Arms Act. He pointed out that FIR is by son of deceased Asaram. It is doubtful whether he had seen the occurrence as he inspite of claiming to have seen the assault on father, did not intervene. That evidence of material witnesses are full of omissions and contradictions and there is improper appreciation of evidence, more particularly, of alleged eye witness PW8 Kalyan Asaram Bahir. That except testimony of PW8 Kalyan, there is no other independent witness and therefore, there being a strong case in appeal and good chances of succeeding in appeal, it is prayed that till then sentence so awarded be suspended and applicant be set at liberty.

3. In the light of above submissions, we have gone through the record before us. Here we are now only called upon to ascertain whether it is a fit case at all for suspension of sentence and grant of bail for exercising powers under Section 389 of the Cr.P.C. There are certain parameters and factors which are required to be borne in mind like probability of appeal being allowed etc. Law to that extent is spelt out in the case of ***Laxman Malhari Sable v. State of Maharashtra; 1997 (2) Mh.L.J. 780.***

4. Keeping the same in mind, we have taken a brief survey of prosecution evidence in the trial Court. It seems that it is a case of double murder i.e. death of one Asaram and one Nitin . Doctors who conducted post mortem on above two dead bodies are PW11 Dr.Sanjay Kisanrao Munde and PW12 Dr.Yuvraj Haribhau Kharade. They have opined in their evidence about death of deceased Asaram to be due to “intracranial hemorrhage due to injuries over head and multiple injuries over body”, whereas cause of death of deceased Nitin is also due to “intracranial hemorrhage due to injuries over head and multiple injuries over body”. Therefore, apparently it is a case involving double murder. Record shows that in all fifteen witnesses are examined and there is previous enmity between deceased Asaram and accused persons and litigation are also pending regarding dispute over land.

5. **PW5** Bapu Asaram Bahir seems to be informant and eye witness. As regards to present applicant is concerned, informant has marked his presence and attributed role of carrying iron rod. He claims assault on his father. Going by nature and number of injuries sustained by deceased Asaram and deceased Nitin, it is apparently serious offence of double murder. Admittedly, applicant was not on bail during the trial. Therefore, we are of the considered opinion that it is not a fit case for granting relief as prayed. Hence, following order :

ORDER

Criminal Application No.3657 of 2023 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT