

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL APPLICATION NO. 3613 OF 2023
IN CRIMINAL APPEAL NO. 867 OF 2023

Ajay Subhramani Shrisundar
VERSUS
The State of Maharashtra and another

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Mr. S.J. Salunke – Advocate for Applicant
Mr. R.B. Bagul – APP for Respondent No.1, State
Mr. R.V. Gore a/w. Ms. P.P. Wangikar – Advocate for Respondent
No.2

AND
CRIMINAL APPLICATION NO. 3672 OF 2023
IN CRIMINAL APPEAL NO. 870 OF 2023

Ashabai Tukaram Jadhav
VERSUS
The State of Maharashtra and Another

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Mr. S.J. Salunke – Advocate for Applicant
Mr. R.B. Bagul – APP for Respondent No.1, State
Mr. R.V. Gore a/w. Ms. P.P. Wangikar – Advocate for Respondent
No.2

AND
CRIMINAL APPLICATION NO. 3716 OF 2023
IN CRIMINAL APPEAL NO. 919 OF 2023

Shrikant Rushikumar Tadepkar
VERSUS
The State of Maharashtra and Another

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Ms. Maya R. Jamdhade – Advocate for Applicant

Mr. R.B. Bagul – APP for Respondent No.1, State
Mr. R.V. Gore a/w. Ms. P.P. Wangikar – Advocate for Respondent
No.2

AND
CRIMINAL APPLICATION NO. 3711 OF 2023
IN CRIMINAL APPEAL NO. 917 OF 2023

Sheru Afsar Khan
VERSUS
The State of Maharashtra and Another

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Ms. Maya R. Jamdhade – Advocate for Applicant
Mr. R.B. Bagul – APP for Respondent No.1, State
Mr. R.V. Gore a/w. Ms. P.P. Wangikar – Advocate for Respondent
No.2

AND
CRIMINAL APPLICATION NO. 3714 OF 2023
IN CRIMINAL APPEAL NO. 918 OF 2023

Javed Hamid Pathan
VERSUS
The State of Maharashtra and Another

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Ms. Maya R. Jamdhade – Advocate for Applicant
Mr. R.B. Bagul – APP for Respondent No.1, State
Mr. R.V. Gore a/w. Ms. P.P. Wangikar – Advocate for Respondent
No.2

AND
CRIMINAL APPLICATION NO. 3721 OF 2023
IN CRIMINAL APPEAL NO. 921 OF 2023

Akku @ Shaikh Akim Shaikh Rahim
VERSUS
The State of Maharashtra and Others

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Mr. T.A. Quadri a/w. Mr. Shaikh Mujtaba Gulam Mustafa –

Advocate for Applicant

Mr. R.B. Bagul – APP for Respondent No.1, State

Mr. R.V. Gore a/w. Ms. P.P. Wangikar – Advocate for Respondent No.9

**AND
CRIMINAL APPLICATION NO. 3847 OF 2023
IN CRIMINAL APPEAL NO. 984 OF 2023**

Kiran Bhujangrao Kad
VERSUS
The State of Maharashtra and Another

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Mr. Jeevan J. Patil – Advocate for Applicant

Mr. R.B. Bagul – APP for Respondent No.1, State

Mr. R.V. Gore h/f. Ms. P.P. Wangikar – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 26th October, 2023

ORDER :

1. All these applications are filed by the applicants who are original accused Nos.1 to 4 and 6 to 8 in Sessions Case No.103 of 2014 for suspension of their substantive sentences and their release on bail during the pendency of appeals preferred by them. All the applicants/accused are convicted by the learned Trial Court in the aforesaid Sessions Case under Sections 307, 143, 147 and 148 read with Section 149 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for different periods as

mentioned in operative part of the order. The maximum sentence of imprisonment appears to be of seven years.

2. The respective learned Counsel appearing for all these applicants submit that, the learned Trial Court despite their being no specific role ascribed to these applicants about their alleged participation in commission of crime, erred in convicting them as aforesaid. According to them, there is no specific role ascribed against some of the accused in respect of their involvement in crime. They pointed out that, there was civil dispute between informant and the present applicants and possibility of lodging false case against them was there only.

3. On the contrary, learned Counsel for informant vehemently pointed out that, it was not the case of free fight but all the accused were aggressive and armed with dangerous weapons at the time of incidence. Pre-planning was there and all of them were sharing common object. According to him, accused Nos. 4, 5 and 6 were the main accused and there were criminal antecedents to the credit of Shrikant. Thus, he prayed for rejection of all the applications.

4. On the other hand, learned A.P.P. also supported the arguments made on behalf of original informant. According to him, the accused were large in number and they assaulted the informant with deadly weapons. Moreover, roles and manner in which they committed the offence have been established by the prosecution. Further, the learned Trial Court after considering the entire evidence on record has convicted the applicants.

5. Heard rival submissions and also perused the documents on record.

6. Admittedly, all the applicants are convicted as per the judgment and order of learned Trial Court i.e. the learned Additional Sessions Judge, Jalna and that too after considering the entire evidence on record. However, it appears that, all the applicants have deposited the fine amount in the lower Court and it is also significant to note that, all of them were on bail during the trial. Though there is certain evidence about the involvement of some of the applicants but in respect of some of the applicants, there is no role ascribed to them while committing the crime. Learned Counsel for the original informant also submitted on record, the list of crime registered against accused No.6 – Shrikant

and on perusal of the same, it appears that as many as eleven crimes have been registered against him in Jalna Police Station. However, except the present crime other crimes are registered from the year 2007 to 2013. There is nothing on record whether he has been acquitted or convicted in respect of other crimes. Further, it is important to note that all the applicants were on bail during the trial and they have also deposited the fine amount.

7. Learned Counsel for applicant Nos.4 and 8 relied upon the judgment of Hon'ble Apex Court in the case of **Kiran Kumar Vs. State of M.P.** in *Criminal Appeal No.725 of 2000 (arising out of SLP (Cri.) No.1579 of 2000*, wherein it has been observed that, “*for suspending the sentence during the pendency of appeal normal rule is that in cases of short – term sentence the sentence should be suspended and rejection is only by way of exception*”. In that case also the maximum sentence imposed upon accused was for the period of seven years on the second count for the offence punishable under Sections 376, 325 and 506 of the Indian Penal Code. The Hon'ble Apex Court while suspending the substantive sentence of imprisonment of accused during the appeal has made reference to its earlier judgment in case of **Bhagwan Rama Shinde**

Gosai Vs. State of Gujrat reported in (1999) 4 SCC 421, wherein the aforesaid observation was recorded. In the instant case the applicants/accused are sentenced to maximum imprisonment of seven years and during the trial they are on bail. Therefore, considering the short – term sentence of imprisonment and in the light of observations of Hon'ble Apex Court in the aforesaid case the substantive sentence of imprisonment of the present applicants/accused can be suspended during the pendency of these appeals and they can be released on bail by imposing certain conditions.

ORDER

- (a) All these applications are hereby allowed.
- (b) The substantive sentences of imprisonment imposed upon all these applicants in Sessions Case No.103 of 2014 under judgment and order dated 11th September, 2023 passed by the learned Additional Sessions Judge, Jalna, are hereby suspended during the pendency of their respective appeals.
- (c) All the applicants are released on execution of

their P.R. bond of Rs.25,000/- (rupees Twenty Five Thousands only), each and one or more solvent sureties in the like amount.

- (d) They shall not give any threats to the informant or any of the prosecution witnesses during the pendency of these appeals.
- (e) Bail in lower Court.
- (f) All the applications are accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE