

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

**CRIMINAL APPLICATION NO.3170 OF 2021 IN
CRIMINAL APPEAL NO.458 OF 2021**

Jagannath s/o Vitthal Kute

... **APPLICANT**

VERSUS

The State of Maharashtra

... **RESPONDENT**

.....
Mr. S.S. Panale, Advocate for applicant
Mr. A.A. Jagatkar, A.P.P. for respondent
Mr. A.N. Nagargoje, Advocate for informant
.....

CORAM : R.G. AVACHAT J.

Date of reserving order : 27th April, 2023

Date of pronouncing order : 27th June, 2023

ORDER :

This is an application for suspension of substantive sentences of imprisonment. The applicant along with co-convicts has been convicted for the offences punishable under Sections 143, 147, 148, 307, 324 read with Section 149 of the Indian Penal Code and, therefore, sentences to suffer a maximum sentence of rigorous imprisonment for 7 years and fine with default stipulation.

2. Learned counsel for the applicant took this Court through the evidence on record to ultimately urge for grant of the application. He also relied on certain authorities.

3. The learned A.P.P. and the learned counsel for the intervenor/ informant would, on the other hand, submit that, the victim was mercilessly beaten up. The victim is not in his senses. He has been confined to bed. He is unable to speak. His evidence, therefore, could not be recorded. The appeal is ready for hearing. This is second/ third application of the applicant. The application, therefore, could not be heard on merits again and again. The application of the similarly placed co-convict has been turned down. Evidence of eye witnesses was relied on to ultimately urge for rejection of the application.

4. Considered the submissions advanced. Perused the impugned judgment and the evidence on record. It is true that, this is second/ third application of the applicant. His earlier one has been rejected about a year before. True, the appeal may be ready for hearing. The informant has filed revision for enhancement of sentence. Both the criminal appeal and the revision are of the years 2021-2022. There are very many jail appeals awaiting their turn for hearing.

5. It is true that the victim has suffered permanent disability. He has been confined to bed. He is unable to speak. It is very unfortunate. There is every sympathy for him. The fact is, however, that it is a case of a term sentence of 7 years. The

applicant was in jail for about 2 months pending enquiry and investigation of the crime and for close to 2 years post conviction. It is the case of the prosecution that Vikram (victim) was assaulted since he played a spoil sport in settlement of marriage of daughter of one of the co-convicts namely Bhanudas. The victim could not give his evidence. The F.I.R was lodged by his father. It was based on information given to him by someone else. The informant's evidence is, therefore, not incriminating except for setting the criminal law in motion.

6. P.W.2 Anna and P.W.4 Ramesh claim to be the eye witnesses. The F.I.R. was lodged 17 hours after the incident. Admittedly, the police had reached the scene of offence within an hour. Both these eye witnesses claim to have been present when the police had been there. None of them relate the police the manner how the incident took place and who were the assailants. One of the two eye witnesses, namely P.W.4 is the maternal uncle. Their conduct in not reporting the police of the incident casts doubt about their presence at the scene of offence and witnessed the crime. Even P.W.2 did not accompany the injured to the hospital.

7. These are the observations prima facie in nature. The evidence for the prosecution needs to be scrutinised threadbare during hearing of the appeal. The applicant is behind the bars close to 2 years as against the sentence of 7 years. The appeal is

not likely to come for hearing by its turn in near future. The earlier application was withdrawn/ rejected at the early stage of filing of the appeal. This Court, therefore, entertained this application and on hearing, find it to be a fit case to grant the application. Hence the order :

ORDER

(i) The Criminal Application is allowed.

(ii) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the present applicant by learned Additional Sessions Judge, Vaijapur, District Aurangabad by judgment and order dated 7/9/2021, passed in Sessions Case No.72/2013 to stand suspended and the present applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(iii) The applicant shall mark his presence at the concerned police station on first Monday of every month till decision of the appeal.

(R.G. AVACHAT, J.)

fmp/-