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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 975 OF 2023
IN
CRIMINAL APPEAL NO. 613 OF 2019**

1. Sanjay Manik DindoreApplicants
2. Vijay Manik Dindore

Versus

1. The State of MaharashtraRespondents
2. Sitaram Yellappa Dindore

Ms. Anjali Patil a/w Ms. Mallika Sharma for the applicant
Mrs. P. P. Shinde, APP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 28th JULY 2023.

P.C. :

1. Heard learned counsel for the applicants.
2. By this application, the applicants seek suspension of their sentence and enlargement on bail pending the hearing and final disposal of their aforesaid appeal.

3. The applicants vide Judgment and Order dated 2nd April 2019 have been convicted by the Sessions Judge, Barshi, District: Solapur in Sessions Case No. 181 of 2014 alongwith other co-accused as under:

— for the offence punishable under Section 148 of the Indian Penal Code, to suffer simple imprisonment for three years.

— for the offence punishable under Section 341 read with 149 of the Indian Penal Code, to suffer simple imprisonment for one month.

— for the offence punishable under Section 302 read with 149 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 10,000/- each, in default to suffer simple imprisonment of one year.

All the aforesaid sentences are directed to run concurrently.

By the very same Judgment and Order, the learned Judge acquitted accused no. 19-Dnyaneshwar Suresh Lavand.

4. Perused the papers. According to the prosecution, the incident took place on 26th April 2014 at around 7.15 – 7.30 a.m. on a public

road, near Indira Nagar Zopadpatti and in front of the house of accused no. 1- Shivaji @ Anna Chandrakant Pawar. It is the prosecution case, that about 20 accused who were present at the spot assaulted Ichappa @ Vitthal (deceased) with weapons, resulting in his death. Accordingly, P.W.1 – Sitaram, uncle of the deceased, lodged an F.I.R., as against the accused on the very same day i.e. on 26th April 2014. After investigation, chargesheet was filed in the said case and after a full fledged trial, the applicants were convicted as stated aforesaid.

5. Prosecution in support of its case, examined three eye witnesses i.e. P.W. 1- Sitaram; P.W. 2 – Kondabai, grandmother of the deceased and P.W. 8 – Vijay.

6. A perusal of the evidence of P.W. 1- Sitaram, (first informant and an eye-witness) shows, that he had witnessed the incident of assault on his nephew – Ichappa @ Vitthal on 26th April 2014. P.W. 1-Sitaram in his evidence has named the accused who assaulted his nephew and the weapons held by them and with which he was assaulted. As far as the

applicants are concerned, a perusal of his evidence shows that no overt act has been attributed to the applicants nor does his evidence show that the applicants were armed with any weapons. Infact, the said witness has not even identified the applicants in Court.

7. As far as evidence of P.W. 2 - Kondabai is concerned, she has stated that she has witnessed the incident of assault on 26th April 2014 and has stated about the weapons held by the accused. She has further stated which of the accused assaulted her grandson and with which weapon. As far as the applicants are concerned, she has stated that the applicants were armed with wooden logs. In her cross-examination, P.W. 2-Kondabai has stated that when she went to the spot, she did not speak to any person and that when she reached the spot, her grandson- Ichappa @ Vitthal was lying in a pool of blood and that Ichappa @ Vitthal's face was in gutter.

8. As far as evidence of P.W. 8-Vijay is concerned, it appears that the statement was recorded three months after the incident. It prima facie appears that the said witness was also a panch to the recovery

panchanamas which were prepared much prior to his statement being recorded by the police. Even otherwise, perusal of the evidence of the said witness i.e. P.W. 8-Vijay shows, that on the previous date i.e. on 25th April 2014, he saw about 20 persons whom he has named sitting near the finance office in an open space and that on the day of the incident i.e. on 26th April 2014 when he was proceeding for work, he saw the deceased being assaulted. He has stated that 20 persons who were present on the previous day assaulted the deceased. However, since he was frightened, he ran away from the spot. That is all what has been stated by the said witness.

9. It is informed that there is no other circumstantial evidence as against the applicants, in the form of recovery of any weapon or blood stained clothes or any other circumstance. It is also stated by the learned counsel for the applicants that the applicants have no antecedents. Statement accepted. The applicants are in custody since 16th July 2014 i.e. for almost 9 years.

10. Considering the role of the applicants and the evidence qua

them, the application is allowed and the applicants' sentences are suspended and they are enlarged on bail on the following terms and conditions:

ORDER

- i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- ii) The Applicants shall report to the trial Court, once in three months on the day/date specified by the trial Court, till their Appeal is finally disposed of;
- iii) The Applicants shall keep the trial Court informed of their current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

11. The Application is allowed in the aforesaid terms and is accordingly disposed of.

12. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.