

*Uday S. Jagtap*

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

**INTERIM APPLICATION NO. 2592 OF 2023
IN
CRIMINAL APPEAL NO. 804 OF 2023**

1. Vijay Shivram Sabale
2. Sudam Shivram Sabale
3. Anil Sudam Sabale .. Applicants

Vs.

The State of Maharashtra .. Respondent
Through Satara Taluka Police
Station, Dist. Satara

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Dr. Uday P. Warunjikar h/f Mr. Mukund S. Mane for the applicants
Mr. A.R. Kapadnis, APP for the respondent – State
Mr. Paras Yadav i/b Mr. Sumant Patole for the intervenor
Mr. D.D. Gaikwad, H.C. Satara Taluka Police Station present
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CORAM : PRITHVIRAJ K. CHAVAN, J.

**Reserved on : 11th SEPTEMBER, 2023
Pronounced on : 15th SEPTEMBER, 2023**

ORDER :-

1. This is an application under Section 389 of the Criminal Procedure Code by the applicants, who have been convicted and sentenced by the Sessions Judge, Satara in Sessions Case No.74 of 2016 on 05.07.2023. The operative part of the impugned judgment is as under :-

“1. Accused No.1 Vijay Shivram Sabale, No.2 Sudam Shivram Sabale and No.5 Anil Sudam Sabale are convicted under Section 235(2) of the Code of Criminal Procedure, 1973, of the offences punishable under Sections 143, 147, 148, 307 r/w 149 of the Indian Penal Code.

2. Accused No.1 Vijay Shivram Sabale is sentenced to suffer rigorous imprisonment of four years of the offence punishable under Section 307 r/w 149 of the Indian Penal Code and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in case of default of payment of fine, he shall suffer 3 months (three months) simple imprisonment.

3. Accused No.2 Sudam Shivram Sabale is sentenced to suffer rigorous imprisonment of four years of the offence punishable under Section 307 r/w 149 of the Indian Penal Code and to pay fine of Rs.5,000/- (Rupees Five Thousand only), in case of default of payment of fine, he shall suffer 3 months (three months) simple imprisonment.

4. Accused No.5 Anil Sudam Sabale is sentenced to suffer rigorous imprisonment of four years of the offence punishable under Section 307 r/w 149 of the Indian Penal Code and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only), in case of default of payment of fine, he shall suffer 3 months (three months) simple imprisonment.

5. Accused No.1 Vijay Shivram Sabale is further sentenced to suffer rigorous imprisonment of two months of the offence punishable under Section 143 r/w 149 of the Indian Penal Code and to pay a fine of Rs.500/- (Rupees Five Hundred only), in case of default of payment of fine, he shall suffer 15 days (fifteen days) simple imprisonment.

6. Accused No.2 Sudam Shivram Sabale is further sentenced to suffer rigorous imprisonment of two months of the offence punishable under Section 143 r/w 149 of the Indian Penal Code and to pay a fine of Rs.500/- (Rupees Five Hundred only), in case of default of payment of fine, he shall suffer 15 days (fifteen days) simple imprisonment.

7. Accused No.5 Anil Sudam Sabale is further sentenced to suffer rigorous imprisonment of two months of the

offence punishable under Section 143 r/w 149 of the Indian Penal Code and to pay a fine of Rs.500/- (Rupees Five Hundred only), in case of default of payment of fine, he shall suffer 15 days (fifteen days) simple imprisonment.

8. Accused No.1 Vijay Shivram Sabale is further sentenced to suffer rigorous imprisonment of one year of the offence punishable under Section 147 r/w 149 of the Indian Penal Code and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in case of default of payment of fine, he shall suffer 1 month (one month) simple imprisonment.

9. Accused No.2 Sudam Shivram Sabale is further sentenced to suffer rigorous imprisonment of one year of the offence punishable under Section 147 r/w 149 of the Indian Penal Code and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in case of default of payment of fine, he shall suffer 1 month (one month) simple imprisonment.

10. Accused No.5 Anil Sudam Sabale is further sentenced to suffer rigorous imprisonment of one year of the offence punishable under Section 147 r/w 149 of the Indian Penal Code and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in case of default of payment of fine, he shall suffer 1 month (one month) simple imprisonment.

11. Accused No.1 Vijay Shivram Sabale is further sentenced to suffer rigorous imprisonment of two years of the offence punishable under Section 148 r/w 149 of the Indian Penal Code and to pay a fine of Rs.2,000/- (Rupees Two Thousand only), in case of default of payment of fine, he shall suffer 2 months (two months) simple imprisonment.

12. Accused No.2 Sudam Shivram Sabale is further sentenced to suffer rigorous imprisonment of two years of the offence punishable under Section 148 r/w 149 of the Indian Penal Code and to pay a fine of Rs.2,000/- (Rupees Two Thousand only), in case of default of payment of fine, he shall suffer 2 months (two months) simple imprisonment.

13. Accused No.5 Anil Sudam Sabale is further sentenced to suffer rigorous imprisonment of two years of the offence punishable under Section 148 r/w 149 of the Indian Penal

Code and to pay a fine of Rs.2,000/- (Rupees Two Thousand only), in case of default of payment of fine, he shall suffer 2 months (two months) simple imprisonment.

14. All the substantive sentences shall run concurrently.

15. Accused No.3 Sunil Sudam Sabale, No.4 Raghunath Baburao Sabale and No.6 Amol Macchindra Sabale are hereby acquitted under Section 235 of the Code of Criminal Procedure for the offences punishable under Section 143, 147, 148, 307 r/w 149 of the Indian Penal Code.

16. The muddemal property at Sr.Nos. 1 to 17 being worthless, be destroyed after appeal period is over, in case the appeal is preferred, the muddemal be disposed off as per the decision of Hon'ble Appellate Court. The muddemal property at Sr.No.18 vehicle dumper bearing No.MH-11-AL-4261 is already returned to its registered owner on his execution of bond. The said bond stands canceled after appeal period is over.

17. The accused No.1 Vijay Shivram Sabale, No.2 Sudam Shivram Sabale and No.5 Anil Sudam Sabale are entitled for set off as per the provisions of Section 428 of the Code of Criminal Procedure.

18. The accused No.1 Vijay Shivram Sabale, No.2 Sudam Shivram Sabale and No.5 Anil Sudam Sabale shall surrender to their bail bonds.

19. The bail bonds of accused No.3 Sunil Sudam Sabale, No.4 Raghunath Baburao Sabale and No.6 Amol Macchindra Sabale shall stand cancelled.

20. The accused No.3 Sunil Sudam Sabale, No.4 Raghunath Baburao Sabale and No.6 Amol Macchindra Sabale to furnish P.R. Bond of Rs.15,000/- each with one surety in like amount towards the compliance of Section 437-A of the Code of Criminal Procedure, 1972.

21. Copy of judgment and order be given to the accused No.1 Vijay Shivram Sabale, No.2 Sudam Shivram Sabale and No.5 Anil Sudam Sabale free of costs.”

2. Few facts germane for disposal of the application can be stated as follows.

3. Complainant – Rahul Madhukar Sabale was then working as a Police Head Constable at Kolhapur. The father of the complainant is a resident of village Vaduth. The complainant has an agricultural land at Vaduth. His parents reside at Vaduth. The complainant had visited Vaduth on 11.11.2015 during Diwali holidays. It is the case of the prosecution that on 14.11.2015 around 10.00 a.m., Mahesh Sabale – brother of the complainant was driving his tractor towards *Vetalpatti Shiwar*. When he reached near the Kanher Canal road, he noticed one of the applicants unloading sand illegally transported by him on the public road. It was stolen sand which was being unloaded by the applicant – Anil, who was in habit of transporting and unloading illegally excavated sand on a public road. Mahesh Sabale warned him not to unload sand on a public road. Applicant – Anil, therefore, threatened Mahesh not to obstruct him in unloading the sand on a public road, else, he would kill him as well as kill his family members. Mahesh, in turn, informed about the threats to the complainant – Rahul Sabale. Rahul, therefore, called applicants – Anil, Vijay and others in front

of his house and asked them not to quarrel with Mahesh. The applicants with other accused thereafter left the place.

4. On 14.11.2015 around 2.00 p.m., applicants – Anil, Sudam and Vijay along with rest of the accused, in prosecution of their common object, formed an unlawful assembly in front of the house of complainant. They arrived over there in a Dumper bearing Registration No. MH-11-AL-4261. They raised shouts and threatened the complainant and his family members of dire consequences since they (complainant and his family) were obstructing in illegal excavation of sand. By that time, Madhukar Sabale – father of the complainant came out of the house. He was assaulted by the applicants. Madhukar screamed for help. The complainant and his brother Mahesh came out of the house. They too were assaulted by the applicants and the rest of the accused.

5. It is the contention of the prosecution that Mahesh was assaulted by means of wooden log, iron rod, axe, wooden sticks on his head, back and hands. He was assaulted by accused – Raghunath and Sunil by means of wooden logs on his head and back. When the complainant went for his rescue, he too was

assaulted by applicant – Anil with an iron rod on his head. The Complainant, Mahesh and their father Madhukar sustained greivous injuries due to the said assault. They were treated at Sanjeevan Hospital.

6. A report came to be lodged. Investigation was conducted by the Investigating Agency. Statements were recorded and charge-sheet was filed.

7. Upon committal, learned Sessions Judge framed a charge against the applicants and other accused. After hearing the prosecution and defence, the Sessions Judge convicted and sentenced the applicant and the other accused as above. Learned Sessions Judge acquitted accused no.3 Sunil Sabale, accused no.4 – Raghunath Sabale and accused no.6 – Amol Sabale and convicted applicants Vijay, Sudam and Anil.

8. I heard Dr. Warunjikar, learned Counsel for the applicants as well as Mr. Kapadnis, learned APP for the respondent – State.

9. Dr. Warunjikar would argue that maximum sentence awarded to the applicants by the Sessions Court is of four years for the

offence under Section 307 of the IPC. More emphasis of the learned Counsel was on the aspect of age of the applicant – Vijay, who according to the learned Counsel is more than 80 years, however he had been shown to be 52 years old by the prosecution.

10. Learned Counsel has also invited my attention to the evidence of the prosecution witnesses, more particularly, the evidence of PW-9 Dr. Vinay Sutar, a Homeopathic Doctor attached to Sanjeevan Hospital, Satara as well as the Medical Certificate issued *qua* the injured witnesses. Learned Counsel has also tried to bring on record inconsistencies in the evidence of PW-1 Madhukar Sabale, PW-7 Rahul Sabale and PW-8 Sayaji Kadam.

11. PW-5 Manohar Farande, the Head Constable attached to Satara Taluka Police Station at the relevant time was directed to record the statements of the injured after visiting Sanjeevan Hospital. He recorded the statements of all the 3 injured witnesses. The statements were recorded by his writer namely Police Naik – Barge. Interestingly, all the injured witnesses including PW-7 Rahul Sabale, a Police Sub-Inspector, were admitted in Sanjeevan Hospital and not in the Civil Hospital, which is

adjoining to the Sanjeevan Hospital. PW-5 Manohar Farande, in his cross-examination admitted that Sanjeevan Hospital is a private hospital adjoining to the Civil Hospital and that presence of police is for 24 hours for medico-legal cases. This is a very crucial aspect as to why despite alleging serious assaults upon the victims, they were not admitted in the Civil Hospital? This witness further admits that he had not recorded the time of recording the statement of all the 3 injured. He admitted that PW-7 Rahul Sabale was in ICU.

12. The evidence of injured Madhukar Sabale indicates that on 14.11.2015, when his son injured Mahesh was returning home with the fodder for the livestock in a tractor, he noticed applicant - Anil unloading sand from a Dumper on a public road. When he asked Anil not to dump sand on public road, Anil is said to have threatened injured Mahesh with dire consequences. On the same day, around 2.00 p.m. when this witness with his wife and daughter-in-laws were at home, the applicants along with rest of the accused came and raised shouts. They were armed with axe, iron rods and wooden sticks/logs. The applicant – Vijay inflicted a blow of an axe on the head of this witness while applicant – Sudam

Sabale assaulted on his hand by means of wooden stick. Applicant – Anil Sabale inflicted blows by means of an iron rod and one Amol Sabale had assaulted Rahul on his head by means of wooden stick. When the wife of this witness attempted to rescue the injured, she too was manhandled by the applicants, resulting into an injury to her hand. All the 3 injured were admitted in Sanjeevan Hospital. There is an omission in respect of assault by applicant – Vijay by means of an axe on his head, which is material.

13. PW-7 Rahul Sabale, who is a Police Sub Inspector posted at Kolhapur had been to the village on the day of incident. He spoke in tune with his father PW-6 Madhukar Sabale as regards the incident as well as the assault by the applicants. He deposed that he was assaulted on the head by applicant – Anil with an iron rod, however, his father deposed that Amol Sabale assaulted this witness on his head with a wooden stick. PW-7 Rahul further deposed that an unknown person had assaulted on his back by means of wooden stick. As regards the assault on the head of PW-6 Madhukar Sabale by applicant – Vijay, this witness also corroborated the evidence of his father. The question would be, if all the injured were so brutally assaulted by the applicants and other accused by means of different

weapons of offences, why all of them were not admitted in the Civil Hospital where police constables are deployed round the clock for medico-legal cases?

14. Before scrutinizing the medical evidence, it would be interesting to go through the cross-examination of PW-7 Rahul Sabale wherein he had given vital admissions which *prima facie* create doubt as regards alleged serious injuries suffered by him and other witnesses. When he was asked in the cross-examination as to whether, despite his admission in ICU he had left on 16.11.2015 at 4.30 p.m. and returned at 5.05 p.m., to which he answered as he did not remember. He was asked whether he was discharged on 17.11.2015, 18.11.2015 and 19.11.2015 and again return back, he replied that he did not remember. However, when his attention was invited to the papers of Sanjeevan Hospital (Exh.94) about his entry and exit from the said hospital on three occasions as above and his signature over there, he admitted the same. This creates a doubt as regards the authenticity of his evidence as regards the assault. How can a person who is in ICU would leave the ICU on his own and come back thrice? He also admits that he did not inform the concerned police station either by phone or by sending

some person as regards the incident inspite of the fact that he himself is a Police Sub Inspector.

15. Turning to the evidence of PW-9 Vinay Sutar. He examined all the 3 injured namely Madhukar, Mahesh and Rahul Sabale who were admitted on 14.11.2015. According to this witness, he noticed the following injuries on the head of injured Madhukar Sabale.

“(i) Head injuries over scalp, occipital and vertex region. The injury on occipital region was of 4 inch x deep. The size of injury over scalp was 1 inch x deep. The size of injury on parietal region 3 inch x deep.”

16. It is difficult to understand as to the exact nature and the depth of the injury since the witness has simply testified that 4 inch x deep, 1 inch x deep and 3 inch deep. He did not describe length, width or the depth of the injuries in particular. It reveals from the record that just after the commencement of his evidence, this witness took ill and, therefore, the case was adjourned on 09.12.2022. The evidence of the witness thereafter continued on 22.02.2023.

17. On the second occasion PW-9 Dr. Vinay Sutar described following injuries on the person :- (not recorded on who's person)

“(i) Cut injury due to sharp instrument 2nd, 3rd distal phalynx on right hand second and third phalynx, bleeding active, simple in nature, Injury no. (i) was grievous in nature.

(ii) Multiple abrasions over back, 3x2 inch, 1x2 inch, 3x4 inch and 2x4 inch, all over left side of back, simple in nature. CT Scan was done. No any significant intra cranial abnormality found. Accordingly, I issued the certificate under my signature. Certificate now shown to me is the same, it bears my signature, contents are correct, it is at **Exh.108.**”

18. In case of Mahesh Sabale, he noticed following injuries :-

“1. (i) Lacerated injury, CLW 2 inch x 1.5 inch deep, right posterial parieto occipital region, bleeding present, grievous in nature.

(ii) Lacerated injury CLW 1 inch x 1 cm deep, over right poareital temporal region, bleeding present, grievous in nature.

(iii) Lacerated injury CLW 3 inch x 1.5 cm deep over vertex region, bleeding present, grievous in nature.

(iv) Lacerated injury, CLW over left forearm 4 inch x 1.5 cm deep muscle, bleeding present, grievous in nature.

2. Multiple abrasions, 4 abrasions over left side of back, simple in nature.

CT Scan was done. No any significant intra cranial abnormality found. Accordingly I issued the certificate under my signature. Certificate now shown to me is the same, it bears my signature, contents are correct, it is at **Exh.109.**”

19. In case of Rahul Sabale, he noticed following injuries :-

“(i) Injury due to sharp instrument 4 x 1 x deep, left parietal region, bleeding present, grievous in nature.

CT Scan was done. No any significant intra cranial abnormality found. Accordingly I issued the certificate under my signature. Certificate now shown to me is the same, it bears my signature, contents are correct, it is at **Exh.110.**”

20. In his cross-examination, he admitted not mentioning the age and colour of the injuries in the certificates. He had also admitted that he did not mention injury no.(i) in the certificate issued in respect of the injured Madhukar Sabale as to whether it is on left or right side. Surprisingly, he admits that in a lacerated wound external hemorrhage is a rule. He had not mentioned in the certificate that whether the injuries were independent or corresponding. He also admits that the abrasions are possible due to itching.

21. As regards discharge of injured Rahul Sabale on 16.11.2015, 17.11.2015, 18.11.2015 and 19.11.2015, he testified that the said patient was discharged at his own request. He also admits that as and when Rahul Sabale returned, he was not examined clinically by him. This also creates a doubt as regards medical certificate issued by this witness. His further admission again creates doubt as regards the genuineness of the medical certificate issued by

Sanjeevan Hospital. He had produced the extract of register under the signature of Administrative Officer of the Hospital viz. Prajakta Sutar. She was not examined by the prosecution. He admits that patients were treated by Dr. Y.S. Patil and himself. However, certificates were signed by him for Dr. Y.S. Patil. This is something very strange as to how he signed certificate on behalf of Dr. Y.S. Patil. Dr. Y.S. Patil has not been examined. According to him, the certificates were prepared as per the instructions given by Dr. Y.S. Patil and not by this witness on his own. He also admits that none of the certificate indicates that he examined all the 3 injured and treated them.

22. As regards seizure panchanama, PW-3 Pradeep Deshmukh acted as a panch witness in respect of seizure of the clothes of the injured and the weapons. In cross, he admits that at the time of giving evidence, he had written time and name of the applicant – Anil Sabale on his hand. He testified that constable Pradeep Deshmukh had produced the clothes at the police station, however, this witness was not aware as to whose clothes were seized by the police in his presence. This witness is a public servant, working in the office of Block Development Officer, Satara. He admits that he

was not summoned by the police but he had visited the police station as per instructions of Block Development Officer.

23. Learned APP, has invited my attention to the evidence of PW-6 Madhukar Sabale and PW-7 Rahul Sabale by contending that specific role played by each of the applicants has been proved. However, he could not explain as to why there are inconsistencies in the testimony of the injured witnesses as well as the reason as to why the injured were admitted in a private hospital despite the fact that Civil Hospital was adjoining to the Sanjeevan hospital, where police constables have been deployed 24 hours for medico-legal cases?

24. It is a matter of record that applicant - Sudam Sabale is 80 years old as per the report submitted by Medical Officer, Kolhapur Central Prison on 25.08.2023.

25. Considering the nature of the evidence as well as the other aspects discussed hereinabove, without going into the merits / demerits. It seems that the applicants who were on bail during trial have not misused the liberty granted in their favour and, therefore, they can be released on bail in light of the fact that the appeal is not

likely to be heard in near future. It is a matter of record that applicant nos.1 and 2 were on anticipatory bail by an order dated 03.12.2015 while applicant no.3 was granted bail after his arrest. There are no antecedents brought on record by the prosecution. It is submitted that applicant – Vijay is a public servant. These are *prima facie* observations.

26. In view of the above, detention of the applicants in the custody till the appeal is finally heard would not be just and proper. For the reasons stated hereinabove, the execution of sentence needs to be suspended till the appeal is heard. Now, to the order :-

ORDER

- (i) The application is allowed.
- (ii) The execution of the sentence is suspended upon each of the applicant furnish a P.R. bond in the sum of Rs.30,000/- with one or two sureties in like amount to the satisfaction of the Sessions Judge, Satara.
- (iii) The applicants shall furnish their permanent residential addresses as well as mobile numbers to the concerned police station.

(iv) The applicants shall attend Satara Taluka Police Station on 1st day of each month between 10.00 a.m. to 12.00 noon.

(v) If there are two consecutive defaults in attending the concerned police station, the prosecution would be at liberty to file an application seeking cancellation of bail.

27. The application is disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)