

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2879 OF 2023
IN
CRIMINAL APPEAL NO. 890 OF 2023

Amol Madhukar Bhaval and anr .. Applicants
Versus
The State of Maharashtra and anr .. Respondents

...

Mr. Priyal Sarda, for the applicant.
Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 13th OCTOBER, 2023

P.C:-

1 The appeal filed by the appellants is admitted on 23/8/2023 and he has moved an application seeking suspension of sentence and for securing his release on bail.

2 Heard Mr.Priyal Sarda, learned counsel for the applicants and Mr.Agarkar, learned APP for the State.

On perusal of the impugned judgment delivered in Sessions Case No.350/2013, under which the present applicants i.e. accused nos.2 and 3, were convicted for committing an offence punishable u/s.457, 459, 380 r/w Section 511 of the IPC, the apparent flaw in the finding recorded in the Sessions case is evident and glaring.

3 The case of the prosecution is to the effect that on the night of 20/6/2013, some unknown persons barged entry into the house of the informant and injured his son (PW 3). The informant – his father is found him in a shocked condition and it is alleged that he was assaulted by rod and bat.

4 As per PW 3 – the injured, when he ran towards the gallery, one of the person who had entered into the house assaulted him though he had locked one of the intruder into the room. It was alleged that he was assaulted on stomach and chest. After making him lie down on his stomach, it is alleged that one of the intruder assaulted him on his legs by means of a bat. They also brandished a knife at him but he was also hit by gym rod which was found under the bed.

 In short, the version given by PW 3 is that some unknown persons entered the house with an intention to commit a robbery and they injured him.

 When the injury certificate is perused, it has been produced through PW 4, there is reference of one injury i.e. in form of blunt trauma on occipital region.

 This apparently contradicts the version of PW 3 – the injured as well as the informant.

5 The most glaring aspect of the judgment is the identification of the accused persons. Worth it to note that the Investigating Officer never bothered to conduct a Test

Identification Parade and it is not clear as to on what basis the accused persons were arrested. The evidence of PW 3 reveal that he was called to the police station almost after three months and the accused persons were shown to be by the police and their names were disclosed to him.

The identification of the accused by the witness is for the first time in the witness box i.e. almost after a period of decade and it can be presumed that though a person may have a rock solid memory, but still in the wake of the fact that the the thieves entered into the house and has put to him in the cross-examination that there was darkness in the rook with one bulb of 'O' power, a night bulb was glowing, the version of the prosecution case becomes clearly doubtful. In any case, this is a matter which will be appreciated while hearing the Appeal.

Yesterday, I had asked the learned APP to ascertain whether there are any antecedents to the credit of the appellants and the learned APP has placed before me the list of the antecedents and the chart produced by the learned APP would reveal that they are arraigned as accused to together in three CRs apart from the present C.R. i.e. C.R.No. 194/2020.

6 The offences are of similar nature i.e. 392 r/w Section 34, 459, 511 etc. However, when specifically asked that after 2013, whether he has any brush with law, the learned APP answered in the negative.

In the wake of the above, during the pendency of the Appeal, I deem it appropriate to suspend the sentence imposed against them and to release them on bail by the following order :-

O R D E R

- (a) The Applicants shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.
- (b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer.
- (c) The Applicants shall report to Bijapur Naka police station on first Monday of every month between 5.00 pm to 6.00 p.m, only for the limited purpose of marking their attendance.

It is made clear that absence on two consecutive dates, the Investigating Officer shall inform the Sessions Court about their absence and seek appropriate directions.

(SMT. BHARATI DANGRE, J.)