

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

***CRIMINAL INTERIM APPLICATION NO. 4307 OF 2022
IN
CRIMINAL APPEAL NO. 1073 OF 2013***

1. Jayawant Anandrao Patil
2. Manik Anandrao Patil
3. Dhanaji Laxman Patil
4. Babalya @ Indrajeet Rangrao Patil ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Shirish Gupte, Sr. Advocate a/w Mr. Aniket Nangare, Mr. Sachin Chandan, Ms. Supriya Kak & Mr. Nilesh Khumbar i/b Mr. Nitesh Bhutekar, for the Applicants.

Mrs. P. P. Shinde, A.P.P for the Respondent-State.

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

DATE : 13th JUNE 2023

ORDER (Per Revati Mohite Dere,J.) :

1. Heard learned counsel for the parties.
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 (original accused Nos.1, 2, 4 and 8) along with other accused vide Judgment and Order dated 29th July 2013, passed by learned District Judge-2 and Additional Sessions Judge, Islampur in Sessions Case No. 46 of 2007, have been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 149 of the Indian Penal Code, to suffer life imprisonment and to pay fine of Rs.3,000/- each, in default, to suffer simple imprisonment for two months;
- for the offence punishable under Section 143 of the Indian Penal Code, to suffer rigorous imprisonment for three months and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one month;
- for the offence punishable under Section 147 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one

month;

- for the offence punishable under Section 148 of the Indian Penal Code, to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one month;

- for the offence punishable under Section 452 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month;

- The applicant Nos. 1 and 2 were also convicted for the offence punishable under Section 3 r/w 25 of the Arms Act, to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month;

- The applicant Nos. 1 and 2 were also convicted for the offence punishable under Section 5 r/w 27 of the Arms Act, to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month.

- All the substantive sentences were directed to run concurrently.

4. Learned senior counsel for the applicants submits that the applicants are languishing in jail for about 16 years i.e. since September 2007. Learned senior counsel relied on the judgment of the Apex Court in the case of *Saudan Singh v/s State of Uttar Pradesh*¹, in support of his submission that in cases where the applicants have undergone 10 years, the Apex Court has released the applicants on bail on certain terms and conditions. He submits that the appeal is of the year 2013 and that the said appeal is not likely to come up for the hearing in the immediate near future. He submits that the incident arises out of a property dispute between the applicants and the deceased. He submits that out of the 5 witnesses examined by the prosecution, 3 witnesses have turned hostile and that the evidence of 2 witnesses i.e. PW10 – Mandar Ajit Jadhav and PW11 – Surekha Mahesh Jadhav, the alleged eye-witnesses does not inspire confidence. He submits that both the said witnesses have admittedly not seen the actual assault and that one witness has seen the accused walking towards the shop, where the incident of assault took place and the other witness has seen the accused leaving the spot. He submits that

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PW10's evidence is shaky, inasmuch as, his cross-examination shows that for the first time when he came, the police had come to the spot whereas, from the examination-in-chief, it appears that he had reached the spot before the police came. He submits that the evidence of PW10 that he was supposed to take Mahesh (deceased) for lunch home, is contrary to the evidence of PW11, the wife of Mahesh (deceased), who was told by Mahesh to bring lunch to the shop. PW11 – wife of Mahesh (deceased) has in her evidence stated that she had carried lunch with her, as Mahesh had asked her to bring lunch tiffin for himself and Umesh (deceased). Learned senior counsel submits that PW11 does not even speak about the presence of PW10, belying PW10's presence at the spot. According to Mr. Gupte, learned senior counsel for the applicants, even the evidence of the ballistic expert i.e. PW19 – Gautam Natha Ghadge reveals that he noticed that the bullets fired were fired from .38 caliber revolver and that the said revolver was not sent for examination.

5. Learned APP vehemently opposed the application. She submits that the evidence of the eye-witnesses, coupled with ballistic experts report, clearly shows the complicity of the applicants in the alleged crime. She submits that as far as the revolvers which were used in the commission of the offence are concerned, the ballistic report shows that the bullets were fired from the revolvers which were recovered. She, however, does not dispute the fact, that the applicants are in custody since 2007.

6. Perused the papers in particular the evidence of PW10 and PW11 (eye-witnesses). The incident is alleged to have taken place on 6th September 2007. According to the eye witness PW10, he was to take Mahesh (deceased) with him for lunch home and hence he went on his motorcycle towards the shop; that when he reached the shop at about 2:00 p.m. he saw a crowd in front of the tailoring shop ; that some persons were standing outside the shop, holding sticks in their hand (the said accused who were standing outside the shop have been granted bail by this Court); that he saw the applicant No.1 –Jayawant

Anandrao Patil and applicant No.2 Manik Anandrao Patil and co-accused – Ganesh Patil coming out of the tailoring shop holding pistols in their hands and the other accused armed with koyta, stained with blood; that being terrified, he stepped back; that after the accused fled from the spot, he entered the shop and saw Mahesh and Umesh lying in a pool of blood with injuries on their person. According to PW10, thereafter he went to the police station to lodge an FIR/complaint and accordingly lodged the complaint with the police station and thereafter, again returned to the spot.

7. As far as PW11 is concerned, she has stated that she had carried lunch for her husband – Mahesh and brother-in-law Umesh on the said date i.e. 6th September 2007, as her husband – Mahesh had asked her to bring lunch; that she saw accused including the applicants entering the shop and some accused standing outside; that the accused were assaulting her husband – Mahesh and that after seeing the said scene, she became unconscious.

8. *Prime facie*, we do not find serious infirmities or discrepancies between the evidence of PW10 and PW11 as contended by the learned senior counsel for the applicants. The same would have to be considered after a detailed examination of the overall evidence that has come on record, at the time, when the appeal is finally heard.

9. What is not in dispute is the fact, that the applicants are languishing in jail since 2007 for almost 16 years. The Apex Court in *Saudan Singh (supra)* granted bail therein, to several accused who were in custody for more than 10 to 17 years and whose appeals have been pending before various High Courts. The present appeal is of the year 2013. This Court not only has admissions, but has also been assigned to hear Confirmation cases, Detention cases and Criminal Appeals and hence, it would take some time, before this Appeal can be heard. Having regard to the judgment of the Apex Court in *Saudan Singh (supra)* and having regard to the fact, that the applicants are in custody for about 16 years, we deem it appropriate to allow the application and suspend the applicants sentences and enlarge them on

bail.

10. Accordingly, the application is allowed and the applicants sentences are suspended and they are enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:-

ORDER

- i) The applicants be enlarged on bail on furnishing P.R.Bond in the sum of Rs.1,00,000/- each, with one or more local sureties in the like amount;
- ii) The applicants shall not enter the jurisdiction of Sangli District, pending the hearing and final disposal of their aforesaid appeal. However, liberty is granted to the applicants to file an appropriate application only after a period of one year of their release, for modification/relaxation of the said condition.
- iii) The applicants shall not intimidate or contact the family members of the deceased or any other witnesses concerned with the

said case.

iv) The applicants shall, during the said period, report to the Kolhapur City Police Station, once a fortnight i.e. on the first and third Saturday of every month, between 10.00 a.m. and 12.00 noon.

v) The applicants shall keep the trial Court and the Kolhapur City Police Station, informed of their current addresses and mobile contact numbers and/or change of residences or mobiles details, if any, from time to time.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.