

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 414 OF 2023**  
**WITH**  
**INTERIM APPLICATION NO. 1298 OF 2023**  
**IN**  
**CRIMINAL APPEAL NO. 414 OF 2023**

Ganesh @ Ganya Ashokrao Gaidhani .. Appellants/  
and anr Applicants

Versus

The State of Maharashtra .. Respondent

...

Mr.Ayush Pasbola, a/w Mr. Sankalp Vichare & Siddhart Mehta  
for the appellant/applicants.

Mr. N.B. Patil, APP for the State.

**CORAM: BHARATI DANGRE, J.**

**DATED : 11<sup>th</sup> APRIL 2023**

**P.C:-**

Criminal Appeal No.414 of 2023

1 Heard. Admit.

2 Learned APP waive service for the State.

3 Call for Record and proceedings.

IA No.1298 of 2023

4 On being convicted for committing an offence  
punishable under section 353, 341, 506, r/w 34 of IPC  
Section 3(2) of Prevention of Damage to Public Property Act

and under Section (7)(1) of Criminal Law Amendment Act, the appeal has been preferred, which is admitted.

5 By the present application, the two applicants being tried as accused no.1 and 2, seek suspension of sentence and pray for their release on bail on the ground that the case of the prosecution is based on mere conjectures and surmises and learned Judge has failed to appreciate the evidence brought on record.

Mr. Pasbola, learned counsel would invite my attention to the testimony of PW-1 and PW-2 i.e. the driver and conductor respectively, who have alleged that when the vehicle was being driven from Nashik Road to Shrirampur, when they reached village Palse, three persons came ahead of the vehicle on a red colour Scooty and demanded an explanation as to why one of the politician was arrested. It is alleged that they pelted stones on the glass shield of the bus causing damage to it. It is alleged that the three persons entered into the bus and created a ruckus and thereafter all of them fled from the spot on a Scooty vehicle.

The identification of the accused persons is the moot contention raised in the appeal, as according to Mr. Pasbola, the alleged persons were unknown and PW-1 has specifically stated that their names were made known through the villagers and thereafter, when the persons were brought to the police station he has identified. As far as PW-

2 is concerned, he has given the number of the Scooty on which the accused persons had arrived on the spot and on commission of the offence, fled away, but he state that this number was made known to him through some person and so also their names.

6           This creates a doubt in the case of the prosecution, and in any case, this evidence need to be appreciated while the appeal is being heard.

          Considering the fixed sentence of two years, being imposed upon the applicants/appellants, in the wake of the decision of Hon'ble Apex Court in case of *Bhagwan Rama Shinde Gosai & Ors vs State of Gujarat (1999) 4 SCC 42*, they deserve suspension of their sentence, pending the adjudication of the appeal. They are also entitled to be released on bail, since they were on bail throughout the trial and it is not the case of the prosecution that they have misused the liberty.

7           Hence the applicants are, therefore, entitled to be released on bail on furnishing P.R. bond to extent of Rs. 25,000/- each with one or more sureties of the like amount.

8           Interim Application No. 1298 of 2023 stands disposed off.

**( SMT. BHARATI DANGRE, J.)**