

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

***INTERIM APPLICATION NO. 1530 OF 2023
IN
CRIMINAL APPEAL NO. 964 OF 2022***

Vaibhav Prabhakar Shelar	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
INTERIM APPLICATION NO. 3066 OF 2023
IN
CRIMINAL APPEAL NO. 946 OF 2023***

Hemant Ramakant Godambe	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Priyal G. Sarda for the Applicant in IA/1530/2023

Mr. Satyavrat Joshi for the Applicant in IA/3066/2023

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

Ms. Poonam Bodke Patil for the Original Complainant

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 11th OCTOBER 2023**

P.C. :

1 Heard learned counsel for the parties.

2 By the aforesaid applications, the applicants-Vaibhav Shelar and Hemant Godambe, seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of their respective appeals.

3 The applicants, vide judgment and order dated 30th January 2021, passed by learned Additional Sessions Judge, Pune, in Sessions Case No. 460/2015, have been convicted and sentenced as under:

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for three months;

As far as offences punishable under Section 120B of the Indian Penal Code and Section 4 r/w 25 of the Arms Act, 1959 are concerned, the applicants are acquitted of the said offences.

4 Mr. Sarda and Mr. Joshi, learned counsel for the applicants in respective applications, seek bail on the ground of parity. They submit that the applicants--Vaibhav Shelar and Hemant Godambe are in custody for last 7 years 10 months and 8 years, respectively. They submit that similarly placed co-accused Pappu Ganpat Uttekar's sentence has been suspended and he has been enlarged on bail by the Apex Court vide order dated 1st May 2023 passed in Criminal Appeal Diary No.37680/2022. They submit that the role of the applicants herein, is similar to that of co-accused Pappu Uttekar, whose sentence has been suspended and who has been enlarged on bail. He submits that the Review Petition filed by the complainant i.e.

Kashinath Baban Kudhale has also been dismissed by the Apex Court, which was filed against the order enlarging Pappu Uttekar, on bail.

5 Learned A.P.P does not dispute the fact that the applicants' role is similar to that of Pappu Uttekar and the fact that the applicants-Vaibhav and Hemant are in custody for last 7 years 10 months and 8 years respectively.

6 Perused the papers. The prosecution case rests on direct as well as circumstantial evidence. The sole eye-witness, in the present case, is the complainant (brother of the deceased-Eknath) i.e. PW 1-Kashinath Kudhale. Kashinath Kudhale, in his evidence, has stated that the incident took place on 1st December 2014 at about 8:30 a.m. He has stated that when he was proceeding from Rameshwar Temple, he saw a *i-10* car of his brother-Eknath standing in front of the temple; that 10 to 12 persons were quarreling with Eknath; that as he started going

towards the spot, he saw that chilly powder was thrown at Eknath and that the accused were assaulting him with arms. He has further stated that accused-Sagar Gole threw chilly powder in the eyes of Eknath; that accused-Swapnil Bhilare was armed with a sickle, accused-Mahesh was armed with chopper, accused-Anil Khatpe was armed with sickle (koyta), accused Pappu Uttekar was armed with sickle (koyta), accused Vaibhav Shelar (applicant) was armed with sword and Swapnil Khatpe was armed with a sharp weapon, accused-Hemant Godambe (Applicant) and Ram Kedari were also armed with sharp weapons. According to PW 1-Kashinath Kudhale, all the said accused started beating Eknath. He has stated that Eknath rushed towards backside of temple. He has stated that he rushed towards Eknath, however, the accused had assaulted him on his face and hands and thereafter, the accused fled from the spot.

7 It is not in dispute that Pappu Uttekar, who is alleged to have assaulted the deceased with a sickle (koyta) and against

whom, there is recovery of a sickle, his sentence has been suspended and he has been enlarged on bail by the Apex Court vide order dated 1st May 2023, on the ground that he was incarcerated for more than 7½ years.

8 As far as applicant-Vaibhav Shelar is concerned, although, there is an alleged recovery of a sword at his instance, the same has been disbelieved by the learned Judge. As far as applicant-Hemant Godambe is concerned, there is recovery of blood-stained chopper and clothes, at his instance. It is not in dispute that the applicants-Vaibhav and Hemant are in custody for about 7 years 10 months and 8 years respectively.

9 Learned counsel appearing for the original complainant-Kashinath Kudhale opposed the grant of bail. She, however, does not dispute the fact that a Review Petition filed by the complainant-Kashinath Kudhale was dismissed by the Apex Court vide order dated 5th October 2023. It is not in dispute that

the said Review Petition was filed by Kashinath Kudhale against order dated 1st May 2023, passed by the Apex Court enlarging Pappu Uttekar, on bail.

10 Learned counsel for the respective applicants state that the applicants will not enter the jurisdiction of Paud Police Station, Taluka Mulshi, for two years. Statement accepted.

11 Considering that the role ascribed to the applicants is similar to that of Pappu Uttekar, whose sentence has been suspended and who is enlarged on bail and having regard to the fact that the applicants have been incarcerated for more than 7 years 10 months and 8 years respectively, the applications are allowed and the applicants' sentence is suspended and they are enlarged on bail, pending the hearing and final disposal of their respective appeals, on the following terms and conditions :

ORDER

- i) The applicants-Vaibhav Shelar and Hemant Godambe be enlarged on bail on furnishing P.R. Bond in the sum of

Rs.50,000/- each, with one or two local 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 appeals are finally disposed of;

iii) The applicants shall not contact or attempt to influence the complainant, witnesses or any person concerned with the case;

iv) The applicants shall surrender their passports, if any, before the trial Court;

v) The applicants shall not enter the jurisdiction of Paud Police Station, Taluka Mulshi, until final disposal of the applicants' respective appeals;

vi) The applicants are, however, granted liberty to move an application for modification of clause No. (v), after two years;

vii) The applicants shall keep the trial Court informed of their current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time;

viii) 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 applications are disposed of in the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.