

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1496 OF 2023

IN

CRIMINAL APPEAL NO. 309 OF 2019

1. Deepak Rakhmaji Dhende and Another ...Applicants

2. Balaji Kundali Dhende

Versus

State of Maharashtra and Anothers ...Respondents

Ms. Vrushali Maindad a/w. Ms. Ankita Nishad and Ms. Shrushti Tupe
for the Applicants.

Mr. V. B. Konde Deshmukh, APP for the State.

Mr. Harshad Inamdar for Respondent no2.

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

DATE : 26th JUNE 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicants seek suspension of their sentence and release on bail pending the hearing and final disposal of their aforesaid appeal.

3. The applicants, vide judgment and order dated 30th January 2019 passed by the Learned Additional Sessions Judge, Barshi in Sessions Case No. 24 of 2016 have been convicted alongwith two other co-accused as under:

- for offence punishable under Section 341 r/w 34 of the Indian Penal Code to suffer simple imprisonment for one month;
- for the offence punishable under section 302 r/w. 34 of the Indian Penal Code to suffer imprisonment for life and to pay a fine of Rs. 5000/-, in default, to suffer further simple imprisonment of six months.

Both the said sentences have been directed to run concurrently.

4. According to the prosecution, there were disputes and quarrels over a piece of land between the applicants on the one hand and the deceased and his relatives on the other. It appears that the incident in question took place on 20th February 2016 at about 7.00 pm, when PW-1 Pramod Husain Dhende and Ashok Dhende were proceeding on the motorcycle. It is alleged by the

first informant PW-1 Pramod, that the accused persons, including the applicants, stopped them and asked Ashok (deceased) whether, he was prepared to give their share in the 22 acres of land. It is alleged that when Ashok (deceased) disclosed that it cannot be done, the accused started assaulting Ashok with fist and kick blows and stones. PW-1-Pramod has also stated to have sustained injuries. There is one eye witness in the said case i.e. PW-1-Pramod, who is also the first informant.

5. Perused the papers. PW-1-Pramod, in his evidence, has stated that all the four accused, including the applicant, came on a motorcycle and questioned the deceased, who was also on a motorcycle, as to whether they would be given a share in the property or not. According to PW-1-Pramod, all the accused started assaulting Ashok with fist and kick blows and stones. It is stated that thereafter, Ashok sustained an injury, after a stone was thrown at him. PW-1 – Pramod in paragraph 4 of his evidence has stated that the applicant-Deepak had thrown stones.

6. As far as PW-3-Kantilal is concerned, he cannot be termed as an eyewitness, as he arrived at the spot after the incident had taken place. The evidence of the doctor, i.e. PW-6 Dr Tushar Gaikwad, shows that the deceased had sustained three injuries - CLW-3x1 cm – into muscle deep above Lt side of upper lip vertically; contusion 2 x 3 cm on occipal region of scalp; and contusion 3 x 3 cm on left side of chest. According to PW-6, Dr Gaikwad, the deceased had died due to ‘Cardio-respiratory arrest due to shock due to a head injury.

7. It is not the prosecution case that the accused had come to the spot, armed with stones. Prima facie, it appears from the evidence on record that the incident had taken place, at the spur of the moment. The appellant has been in custody since 2016. The appeal has been admitted by this court vide order dated 4th March 2019 and the same is not likely to be heard in immediate near future.

8. Considering the aforesaid and having regard to the evidence on record, the application is allowed, and the applicant's sentences are suspended, and they are enlarged on bail on the following terms and conditions :

ORDER

(i) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each, with one or two 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 his Appeal is finally disposed of;

(iii) The applicants shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

(iv) 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.

9. Interim Application is allowed and disposed of in above terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.