

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1453 OF 2022****IN****CRIMINAL APPEAL NO. 476 OF 2022**

Deepak Jaikishan Sharma @ Magic

... Applicant/Appellant

V/s.

The State of Maharashtra

... Respondent

WITH**INTERIM APPLICATION NO. 2501 OF 2022****IN****CRIMINAL APPEAL NO. 279 OF 2020**

Virendrasingh Drinkapalsingh Thakur @ Viren

... Applicant/Appellant

V/s.

The State of Maharashtra

... Respondent

Mr.Vikas Singh for Applicant/Appellant in IA/1453/2022 and for Appellant in Appeal/1305/2022.

Mr.Ravi Dwivedi for Applicant in IA/2501/2022 and for Appellant in Appeal/279/2020.

Mrs.M.M. Deshmukh, A.P.P for Respondent-State.

PSI Mr.Sawant, Nirmal Nagar Police Station is present.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 6th April 2023.

P.C. :

1. These are applications for suspension of sentence and releasing the Applicants on bail during the pendency of their respective appeals.

Applicant Deepak Jaikishan Sharma @ Magic is original accused No.3 and

Applicant Virendrasingh Drinkapalsingh Thakur @ Viren is original accused No.4 in MCOC Special Case No. 2 of 2014. The Trial Court by its Judgment and Order dated 27th December 2019 has convicted the Appellants along with original accused No.7 for the offence punishable under Section 302 read with 34 and other allied sections of Indian Penal Code (for short, 'I.P.C.') and has been sentenced to undergo life imprisonment for remainder of life for the offence punishable under Section 302 of I.P.C..

2. Advocate Mr.Dwivedi appearing for accused No.4 submitted that, the panch witness in whose presence the alleged weapon used in the crime by his client, has turned hostile. That, though PW-1, 2 & 3 claimed that they were present at the scene of offence and were assaulted by the accused persons, no blood stains were found on their clothes. He submitted that, it is the defence of accused No.4 that, he was not present at the scene of offence on the alleged date and time of offence and has been falsely implicated in the present crime. He submitted that, the Applicant has already undergone approximately 9 years and 8 months of actual imprisonment and therefore he may be released on bail.

3. Mr.Vikas Singh, learned Advocate appearing for Accused No.3 submitted that, the presence of accused No.3 at the scene of offence can be doubted as only the interested witnesses, who were friends of deceased Vijay have stated about his presence at the scene of offence and there is no independent witness to the said assault allegedly committed by his client. He

also submitted that, his client has already undergone approximately 9 years and 8 months of imprisonment and his application for bail may be sympathetically considered.

4. Per contra, Mrs.Deshmukh, learned A.P.P. for Respondent-State opposed the application and submitted that, apart from the evidence available on record there are antecedents at the discredit of the Applicants. She submitted that, for establishing supremacy in the said locality, the Applicants along with principal accused Rahul committed murder of Vijay (deceased) on the fateful night in a restaurant. She therefore prayed that, the applications may dismissed.

5. Perusal of evidence on record *prima-facie* indicates that, Chandan @ Akhandpratap K. Singh (PW-1), Lokesh Teja Kothari (PW-2) and Kamlesh Jagdish Tiwari (PW-3) are the eye witnesses to the alleged incident. They were accompanying Vijay (deceased) on the fateful night in the restaurant for having drinks and dinner. The Postmortem Report which has been duly proved by Dr.Sunil M. Jawale (PW-11) indicates that, the deceased suffered more than 22 incised stab wounds, about 3 chop wounds and 2 firearm injuries. Undoubtedly the murder of Vijay was a brutal murder. The eye witnesses have assigned role of use of sharp edged weapons in the assault to the Applicants herein. The recovery of weapons at their instances has been duly proved by the Investigating Officer. Thus *prima-facie* there is sufficient material to exhibit indictment of the Applicants in the present

crime.

6. Learned A.P.P. submitted that, there are about 10 cases pending against the Applicant Deepak Jaikishan Sharma @ Magic and 02 cases against Virendrasingh Drinkapalsingh Thakur @ Viren.

7. Taking into consideration the aforestated facts, we are not inclined to suspend the sentences imposed upon the Applicants and release them on bail.

8. Both the Interim Applications are accordingly rejected.

9. As the Applicants are in jail for about 10 years, list the Appeals on Final Hearing Board, as per their own turn.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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