

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1734 Of 2023
IN
CRIMINAL REVISION APPLICATION NO. 127 of 2023

Mohan Laxman Chavan & Anr .. Applicants
Versus
The State of Maharashtra .. Respondent

...

Mr. Advait U. Shukla for the applicants.
Ms.P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd MAY, 2023

P.C:-

Revn No.127/2023.

1 Heard.

Hearing expedited.

IA No. 1734/2023

2 Interim Application is taken out in the Revision Application seeking suspension of sentence imposed upon the two applicants by the impugned judgment and order dated 13/10/2020 passed by the JMFC, Akkalkot, Solapur in RCC No.02/2017 and which has been upheld by Addl. Sessions Judge,

Solapur in Criminal Appeal No.11/2020 on 15/03/2023. The applicants also seek their release on bail.

3 With the able assistance of the learned counsel for the applicants and the learned APP, I have perused the impugned judgment and the copies of depositions which are placed on record.

The learned counsel for the applicants would invite my attention to the perversity in the impugned judgment as the Courts below have failed to consider the contradiction in the case of the prosecution which has surfaced on record through PW 1, victim and PW 2 and 5 i.e. the mother and the father of PW 1.

As per PW 1, the first incident took place on 1/1/2017, when she was called by accused no.1 and when she inquired where is his wife, he told that his wife is outside.

4 As per her version on the very same day, she narrated the incident to her mother, and at around 7.00 p.m in the evening, when she was chatting with her mother, both the accused persons barged into her house and they mounted an assault. Her specific version before the Court is to the effect that accused no.2 assaulted her mother, whereas she was assaulted by accused no.1. Thereafter, it is alleged that accused no.1 embraced her and touched her inappropriately and threatened her that if she filed a complaint, he would eliminate her. Thereafter, according to her, the complaint was filed on 2/1/2017.

In contrast, the version of PW 2, her mother, is to the effect that on 2nd January 2017, at around 7.00 p.m, her daughter was whimpering and she disclosed to her that accused no.1 had called her when she was standing under the tree. Upon the incident being stated, as per PW 2, she assured her daughter that they would take appropriate steps after her elder daughter visit the house. Thereafter, as per PW 2, the accused persons entered into the house and accused no.1 inappropriately touched the victim and was assaulted for reporting the incident to her. Accused no.2 is alleged to have assaulted by means of fist and blows.

She improved the version and state that the accused tore the apparels which her daughter was wearing.

Another version comes through PW 5, father of PW 1 and husband of PW 2, who corroborate PW 1, to the effect that the first incident took place on 1st January and second incident occurred on 2nd January, when the accused persons entered into their house and assaulted her since she had reported about the earlier day incident.

5 The prosecution, however, has not brought any material on record, to disclose the source of the accused persons knowing that the incident has been narrated by PW 1 to PW 2 and PW 5, her parents, and it is not the case of the prosecution that pursuant to the reporting, he was questioned or any steps

were taken against him, like reporting the incident to the police station.

6 The Medical Officer has been examined as PW 9 who has reported about one contusion over left zygomatic bone of PW 2.

With the inconsistencies and contradictions in the evidence, the learned counsel would submit that considering the fixed term sentence imposed upon the applicants, they deserve their release on bail and the sentence imposed, deserve suspension, since it is for a fixed and minuscule term.

7 I find merit in the submission, as the inconsistencies in the version in the prosecution case are evident and they will have to be appreciated at the time of hearing of the Appeal.

6 In the wake of the above, Interim Application is allowed in terms of prayer clause (a) by suspending the sentence imposed on the applicants under the impugned judgment.

Pending the Appeal, the applicant no.1 Mohan Laxman Chavan and applicant no.2 Sandip Laxman Chavan are directed to be released on bail on furnishing P.R bond in the sum of Rs.25,000/- each with one or two sureties in the like amount.

(SMT. BHARATI DANGRE, J.)