



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1976 OF 2023
IN
CRIMINAL APPEAL NO. 705 OF 2023

(1) Umesh Narayan Ambre ...Applicants

(2) Sandip Harishchandra Ambre

Versus

State of Maharashtra

...Respondent

Mr. Siddharth Mehta for the Applicants.

Ms. P. P. Shinde, APP for the State.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 11th AUGUST 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicants – Umesh Narayan Ambre and Sandip Harishchandra Ambre (original accused nos. 5 and 6), seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of their aforesaid appeal.

3. The applicants alongwith other four accused were convicted vide judgment and order dated 16th March 2023 passed by the learned Additional Sessions Judge, Chiplun in New Sessions Case No. 18 of 2020 and sentenced as under :

—for the offence punishable under section 302 r/w section 109 of the Indian Penal code, to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- each in default, to suffer simple imprisonment of six months each.

4. Perused the papers. The prosecution case rests entirely on circumstantial evidence. Learned counsel for the applicants submits that the role of the applicants is similar to that of Sagar Patil, whose sentence has been suspended and who is enlarged on bail.

5. It is the prosecution case that there was a dispute between the accused no. 1-Deepak Waman Ambre and Omkar Tukaram Kadam on 20th May 2015, as some branches of a Tamrind tree were cut. It is alleged that the accused no. 1-Deepak was enraged by the said conduct. It further appears that the accused no. 1-

Deepak had constructed one padvi near his house and wanted to put tin sheet roof over it and that Omkar Tukaram Kadam had objected to the same. Pursuant thereto, on 28th May 2015 the accused no. 1-Deepak abused and threatened to kill all the family members of the first informant-Sameer Tukaram Kadam. Accordingly, the first informant Sameer Tukaram Kadam (brother of the deceased) lodged a complaint with the Lote police station.

6. The incident in question has taken place on 31st May 2015 i.e. when Omkar went missing from the house. As Omkar did not return, the relatives made inquiries and took efforts to search for Omkar. It appears that at about 11.00 am, the first informant's elder brother-Sanjay Tukaram Kadam, informed him on mobile that the Chiplun police had found a motor cycle lying near a canal, on the Chiplun Alore road, pursuant to which, Omkar's relatives visited the spot and identified some of the articles which were found in a plastic bag. Thereafter, at about 3.30 pm. the Chiplun police informed Omkar's relatives that a dead body of a male person was found near Enron bridge in Vashisti river and called him to identify the said body. The said

body was accordingly identified as being that of Omkar. It was found that Omkar's face was smashed. Pursuant thereto, an FIR was lodged. After investigation, chargesheet was filed and after a full fledged trial, the applicants were convicted for offences stated as aforesaid.

7. As noted earlier, the prosecution case rests entirely on circumstantial evidence. It is alleged by the prosecution, that the applicants were present when a quarrel took place on 20th May 2015. As noted earlier, Omkar went missing on 31st May 2015 i.e. 10 days thereafter. Admittedly, there is nothing on record to show that the applicants were last seen in the company of the deceased-Omkar. Admittedly, there is no recovery of weapons or blood stained clothes, at the instance of the applicants.

8. From a perusal of the impugned judgment and order it appears that the applicants have essentially been convicted only on the disclosure statement i.e. inadmissible portion, made by some of the accused, which could not have been done. According to the learned counsel for the applicants, even in the said

disclosure statement, though inadmissible, the applicants have not been named.

9. Considering the aforesaid, the application is allowed and the applicants sentence are suspended and they are enlarged on bail, pending the hearing and final disposal of their appeal, 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/- 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 their appeal is finally disposed of;
- (iii) The applicants shall keep the trial Court informed of their 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.

(v) The application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.