

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

***INTERIM APPLICATION NO. 2080 OF 2023
IN
CRIMINAL APPEAL NO. 615 OF 2023***

Dipak Datta Wavhal ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Aniket Vagal a/w Mr. Kunal Pednekar for the Applicant

Mr. K. V. Saste, A.P.P for the Respondent-State

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

P.C. :

1 Heard learned counsel for the parties.

2 The applicant vide judgment and order dated 14th February 2023 passed by the learned Additional Session Judge, Nashik in Session Case No. 198 of 2018 alongwith other co-accused, has been convicted and sentenced as under:

- for the offence punishable under Section 302 r/w 149 of the Indian Penal Code to suffer imprisonment for life and to pay fine of Rs. 5,000/- each, in default, to suffer simple imprisonment for six months;
- for the offence punishable under Section 143 of the Indian Penal Code to suffer rigorous imprisonment for three months and to pay fine of Rs. 500/- each, in default, to suffer simple imprisonment for fifteen days;
- for the offence punishable under Section 148 of the Indian Penal Code to suffer rigorous imprisonment for two years and to pay fine of Rs. 1,500/- each, in default, to suffer simple imprisonment for two months;
- All the sentences were directed to run concurrently.

3 Perused the papers, in particular, the evidence of the eye-witnesses i.e. PW 1–Ramesh Gaikwad, PW 8–Dagu Shelke, PW 9- Santosh Kadam and PW 10-Chetan.

4 According to the prosecution, the incident took place on 27th December 2017 at about 10:30 p.m to 11:00 p.m. PW 1–Ramesh, is the first informant and also an eye-witness to the incident. He has stated that he was out with Devidas (deceased) on the said day; that at about 10:30 p.m, they had pav-bhaji and after having pav-bhaji, he, Dinesh (deceased) and Devidas (deceased) went on a Pulsar motorcycle to drop Devidas at Rajivnagar Zopadpatti; that at about 11:00 p.m, when they reached the tar road, outside the house of Devidas, and got down from the motorcycle, they saw one rickshaw in front of them; that from the said rickshaw, Ravi Nikalje, Sachin Nikalje, Krushna Shinde, Nitin Pandit, Dipak Wavhal, Balu Dambale, who were sitting in the rickshaw stepped out; that the said persons came near Devidas and there was a quarrel between them and Devidas, on account of some old dispute. PW 1–Ramesh has further stated that Sachin Nikalje and Krushna Shinde ran towards the Zopadpatti and after going inside the Zopadpatti, Sachin Nikalje returned with a sword like weapon in his hand and Krushna with a sickle (Koyta); that

Sachin Nikalje assaulted Devidas with the sword like weapon on his neck, pursuant to which Devidas fell on the ground; that he (PW 1–Ramesh) and Dinesh tried to lift him, however, at that time, Ravi Nikalje pulled the sword like weapon from Sachin’s hand and stabbed Dinesh (deceased), pursuant to which Dinesh also fell on the ground. According to PW 1–Ramesh, after witnessing the assault, he started running towards the old Indira Nagar Police Station. He has stated that Ravi Nikalje having sword like weapon and others having stones in their hand, started chasing him (PW 1–Ramesh); that whilst running, he fell on the ground, resulting in an injury on his left leg and palm; that he again got up and went to the spot, where Dinesh and Devidas were being assaulted. He has stated that pursuant to the said incident, Dinesh and Devidas succumbed to their injuries. As far as PW 1–Ramesh is concerned, a perusal of his evidence shows that the said witness has not attributed any overt act to the applicant, except for stating that applicant was alongwith other co-accused and that he too got down with the other accused from the rickshaw.

5 As far as PW 8-Dagu is concerned, he has stated that the incident took place on 27th December 2017; that on hearing noise on the road, he saw 5-6 people assaulting his nephew Dinesh; that Ravi Nikalje had held his nephew by his hair and was assaulting his nephew with a chopper on his neck; and that his brother Devidas was lying in blood pool, at a distance of 50-60 feet. As far as PW 8-Dagu is concerned, he has also not attributed any overt act to the applicant. It also appears that the police have recorded his statement, after four days of the incident.

6 As far as PW 9-Santosh is concerned, his evidence shows that on the day and time of the incident, he was at a distance of 100-125 feet; that there was some quarrel going on; that he saw 5-6 persons assaulting his cousin Dinesh and Devidas with a knife. He has further stated that Sachin Nikalje assaulted Devidas in his abdomen with a knife and that Dipak (applicant) and Bablu had held Devidas; that when Devidas came ahead to save Dinesh, Ravi Nikalje pulled out the knife from Sachin's hand and

assaulted Dinesh on his back and neck; that Dinesh tried to run, however, he too fell down and that Krushna Shinde and Nitin Pandit held him, after which, Ravi Nikalje assaulted Dinesh with a knife on his throat. PW 10-Chetan's evidence is similar to that of PW 9-Santosh.

7 Learned counsel for the applicant seeks bail on the ground of parity. He submits that the similarly placed co-accused- Nitin Pandit, Akash @ Bablu Dambale and Krushna Shinde, to whom a similar role has been attributed i.e. of holding the deceased, their sentences have been suspended and they have been enlarged on bail by this Court vide order dated 28th June 2023, 21st July 2023 and 26th September 2023. He further submits that the applicant was on bail pending trial and that the applicant has not misused or abused the liberty granted to him.

8 Learned A.P.P does not dispute the fact that the role of the applicant is similar to that of co-accused – Nitin Pandit, Akash

@ Bablu Dambale and Krushna Shinde, whose sentences have been suspended and who have been enlarged on bail by this Court, vide order dated 28th June 2023, 21st July 2023 and 26th September 2023.

9 We have perused the orders dated 28th June 2023, 21st July 2023 and 26th September 2023, enlarging the co-accused - Nitin Pandit, Akash @ Bablu Dambale and Krushna Shinde, on bail. The role of the applicant is similar to that of co-accused – Nitin Pandit, Akash @ Bablu Dambale and Krushna Shinde, whose sentences have been suspended and who have been enlarged on bail. It is not in dispute that the applicant was on bail pending trial and that post his conviction, he was taken into custody. It is also not in dispute that whilst on bail, the applicant has not abused or misused his liberty or the conditions of bail. Admittedly, apart from the ocular evidence as noted aforesaid, there is no other circumstantial evidence on record, as against the applicant i.e. recovery of any weapon or blood-stained clothes at his instance.

10 Considering what is stated aforesaid and in particular, considering the role of the applicant and the fact, that the applicant was on bail pending trial, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:

ORDER

- i) The applicant 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 applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;

- iii) The applicant 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.

11 The Application is 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.