



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2421 OF 2021
IN
CRIMINAL APPEAL NO. 800 OF 2019**

1. Santosh Tukaram Pawar
2. Nagesh Manik Dhotre ... Applicants
Versus
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO. 1289 OF 2023
IN
CRIMINAL APPEAL NO. 410 OF 2023**

Shashikant Chandu Ghode ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO. 3431 OF 2023
IN
CRIMINAL APPEAL NO. 652 OF 2019**

1. Anil Babu Pawar
2. Babu Bhima Pawar ... Applicants
Versus
The State of Maharashtra ... Respondent

Ms. Vrushali Maindad for the Applicant in IA/2421/2021 and
IA/1374/2020.

Mr. Vikrant Phatate for the Applicant in IA/1289/2023.

Mr. Tohid Shaikh i/b. Ms. Anjali Patil for the Appellant in Appeal/613/2017.

Mr. Omkar Akhade i/b. Mr. Priyal G. Sarda for the Appellant in Appeal/642/2019.

Mr. Yogesh Birajdar i/b. Mr. Nagraj Shinde for the Applicant in IA/3431/2023.

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

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

DATE : 7th OCTOBER 2023

P. C. :

1. Heard learned counsel for the parties.
2. By these applications, the applicants seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicants vide judgment and order dated 2nd April 2019 have been convicted by the learned Session Judge, Barshi, District-Solapur in Sessions Case No. 181 of 2014 alongwith other co-accused and sentenced as under :

- for the offence punishable under section 148 of the Indian Penal Code, to suffer simple imprisonment for three years;
- for the offence punishable under Sections 341 read with 149 of the Indian Penal Code, to suffer simple imprisonment for one month;
- for the offence punishable under Section 302 read with 149 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.10,000/- each, in default to suffer simple imprisonment of one year.

All the aforesaid sentences are been directed to run concurrently.

4. Perused the papers. According to the prosecution, the incident took place on 26th April 2014 at around 7.15 – 7.30 a.m. on a public road, near Indira Nagar Zopadpatti and in front of the house of accused no. 1- Shivaji @ Anna Chandrakant Pawar. It is the prosecution case, that about 20 accused who were present at the spot assaulted Ichappa @ Vitthal (deceased) with weapons, resulting in his death. Accordingly, P.W.1 – Sitaram, uncle of the deceased, lodged an F.I.R., as against the accused on the very same day i.e. on 26th April

2014. After investigation, chargesheet was filed in the said case and after a full fledged trial, the applicants were convicted as stated aforesaid.

5. Prosecution in support of its case, examined three eye witnesses i.e. P.W. 1- Sitaram; P.W. 2 – Kondabai, grandmother of the deceased and P.W. 8 – Vijay.

6. According to P.W. 1 – Sitaram (first informant and eye witness), he had witnessed the incident of assault of his nephew -Ichappa on 26th April 2014. P.W. 1 – Sitaram in his evidence has not named the accused who assaulted his nephew and the weapons held by them with which his nephew was assaulted. No specific overt act has been attributed to any of the accused nor have the applicants been named by P.W. 1 in 161 statement. It is also pertinent to note that P.W. 1 Sitaram has not identified the applicants in TIP. In fact, the said witness has not even identified the applicants in the court.

7. As far as evidence of P.W. 2 - Kondabai is concerned, she has stated that she has witnessed the incident of assault on 26th April 2014 and has stated about the weapons held by the accused. She has further

stated which of the accused assaulted her grandson and with which weapon. As far as the applicants are concerned, she has stated that the applicants were armed with wooden logs. In her cross-examination, P.W. 2-Kondabai has stated that when she went to the spot, she did not speak to any person and that when she reached the spot, her grandson- Ichappa @ Vitthal was lying in a pool of blood and that Ichappa @ Vitthal's face was in gutter.

8. As far as evidence of P.W. 8-Vijay is concerned, it appears that the statement was recorded three months after the incident. It prima facie appears that the said witness was also a panch to the recovery panchanamas which were prepared much prior to his statement being recorded by the police. Even otherwise, perusal of the evidence of the said witness i.e. P.W. 8-Vijay shows, that on the previous date i.e. on 25th April 2014, he saw about 20 persons whom he has named sitting near the finance office in an open space and that on the day of the incident i.e. on 26th April 2014 when he was proceeding for work, he saw the deceased being assaulted. He has stated that 20 persons who were present on the previous day assaulted the deceased. It appears that there was no TIP and the accused have not been identified by the

said witness. It is pertinent to note that the said witness has not named any of the accused in his 161 statement and has identified the applicant in the court for the first time. He has stated that as he was frightened, he ran away from the spot.

9. It is informed that there is no other circumstantial evidence as against the applicants, in the form of recovery of any weapon or blood stained clothes or any other circumstance. It is also stated by the learned counsel for the applicants that the applicants have no antecedents. Statement accepted. The applicants are in custody for almost 9 years.

10. Considering the role of the applicants and the evidence qua them, the application is allowed and the applicants' 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 the appeals are 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.

11. The Applications are allowed in the aforesaid terms and are accordingly disposed.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.