

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

**INTERIM APPLICATION NO.2908 OF 2022
IN
CRIMINAL APPEAL NO.779 OF 2022**

Sandesh @ Sonu Prakash Salve Applicant
versus
State of Maharashtra & Anr. Respondents

**WITH
INTERIM APPLICATION NO.3114 OF 2022
IN
INTERIM APPLICATION NO.2908 OF 2022
IN
CRIMINAL APPEAL NO.779 OF 2022**

Suresh Ratanlal Dalod Intervenor

IN THE MATTER BETWEEN :

Sandesh @ Sonu Prakash Salve Applicant
versus
State of Maharashtra & Anr. Respondents

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- Ms. Angela Singha a/w S. T. Pandey a/w Arvind Singh, a/w Anima Mishra a/w Kajal Upadhyay a/w Ritu Singh i/b. SBG Law Advocate, Advocate for Applicant.
- Smt. M. R. Tidke, APP for State/Respondent Nos.1 and 2.
- Mr. Ganesh Gole a/w Ateet Shirodkar i/b. Bhavin Jain, for Intervenor in IA/3114/2022.

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**CORAM : SARANG V. KOTWAL, J.
DATE : 16th FEBRUARY, 2023**

P.C. :

1. The Applicant Sandesh @ Sonu Prakash Salve has preferred Criminal Appeal No.779/2022, which is already admitted.
2. This is an application for bail pending final disposal of his Appeal. The Applicant is arrested in the subject matter on 18/11/2018 and since then he is in custody. The Applicant was the original accused No.3. There were two other accused in Sessions Case No.133/2019 before the Additional Sessions Judge, Nashik. The Trial Judge vide his Judgment and Order dated 29/06/2022 convicted all the accused including the Applicant for commission of offence punishable u/s 307 r/w 34 of the IPC. They were sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer simple imprisonment for six months. Out of the period of 10 years, the Applicant is already in custody for more than four years.
3. The prosecution case is that on 17/11/2018, because of the previous enmity, the three accused including the present

Applicant, assaulted the injured Suresh Dalod and his son Siddharth Dalod. There are allegations that Suresh's nephew Saurabh was also assaulted.

4. Suresh was examined as P.W.3. He has deposed that the accused No.1 Vikram @ Pappu Tasambad had assaulted him with a chopper. Accused No.2 Pintu @ Pradip Tasambad assaulted him with a wooden stick. The present Applicant assaulted him with a fighter.
5. Siddharth was another injured. He was examined as P.W.1. Saurabh was an eyewitness who was also assaulted. He was examined as P.W.2. Both of them had rushed to save P.W.3. Accused No.1 gave blow of knife on the back of P.W.1 Siddharth. The FIR was lodged by Siddharth. The investigation was carried out. Siddharth and Suresh both were admitted to the hospital.
6. Heard Ms. Angela Singha, learned counsel for the Applicant, Mr. Ganesh Gole, learned counsel for the Intervenor and Smt. M. R. Tidke, learned APP for the State.

7. Learned counsel for Applicant submitted that though the Applicant is convicted u/s 307 r/w 34 of the IPC, there is possibility that the accused No.1 had committed the main offence single handedly. The role attributed to the present Applicant is absolutely minor and there is no corresponding injury to any of the alleged witnesses. She submitted that the Applicant is in custody for more than four years out of 10 years. The Appeal is not likely to be decided within the remaining period. There are no antecedents against him. She therefore prays for grant of bail.

8. Learned counsel Mr. Gole for the Intervenor i.e. the first informant Suresh, who was the victim in this case, opposed these submissions. He invited my attention to the letter sent to the Intervenor through jail by an inmate of the Applicant; wherein an apprehension was expressed that Suresh's safety was in danger as the Applicant and others were planning to seek revenge. He submitted that even after the conviction, the accused No.1 had assaulted the intervenor in the Court premises itself, for which a separate NC is lodged. He therefore expressed

apprehension regarding safety of the intervenor. Even otherwise, on merits, he submitted that, all the accused had come together and therefore the common intention is clear from the roles attributed to them.

9. Learned APP supported the contention of learned counsel Mr. Gole.

10. I have considered these submissions. Though there is conviction u/s 307 r/w 34 of the IPC, the role of the present Applicant is distinguishable from that of the main accused i.e. accused No.1, whose Bail Application is rejected. The Applicant is alleged to have used fighter in assaulting Suresh and Saurabh. However, there are no corresponding injury reflected in the medical evidence. Dr. Bipin Palghadmal was examined as P.W.7 and he has described the injuries suffered by the injured Suresh and Siddharth. According to P.W.1 he was assaulted by the accused No.1 Vikram and accused No.2 Pintu. There are no allegations that the Applicant had assaulted him. Injury

certificate of Saurabh is not produced on record. Therefore, there is nothing to support the prosecution case that the Applicant had caused assault. Though, there is CCTV footage, the fact remains that there is no corresponding injury because of the fighter, which is attributed to the Applicant. Therefore, at this stage, there is scope to believe that the Applicant's role is distinguishable and is minor, compared to the role of the accused No.1 Vikram @ Pappu. Therefore, the Applicant deserves to be granted bail, particularly since he is in custody for more than four years. At the same time, the apprehension expressed by learned counsel Mr. Gole cannot be ignored. Therefore, certain conditions are required to be imposed on him. Needless to add that the police are duty bound to take care of the Intervenor if his apprehension is real and reasonable.

11. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.779 of 2022, the Applicant is

directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.

- (ii) During pendency of this Appeal, the Applicant shall not enter the Nasik District.
- (iii) The Applicant shall report to the nearest police station once a month where he will be residing. He will give prior intimation to the Investigating Officer in this case about his residence.
- (iv) Interim Application No.2908 of 2022 stands disposed of accordingly.
- (v) With disposal of this application, nothing survives in the Intervention Application. In any case, I have heard learned counsel for the Intervenor. Therefore, the Intervention Application i.e. Interim Application No.3114 of 2022, is also disposed of.

(SARANG V. KOTWAL, J.)