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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3917 OF 2022
IN
CRIMINAL APPEAL NO.256 OF 2018**

1] Manish Devidas Jadhav
2] Nilesh Khandu Katare

.... Applicants.
(Orig. Accused Nos.2
and 3)

V/s
State of Maharashtra

.... Respondent.

Mr. Rajiv Patil, Senior Counsel i/b Mr. R.D. Suryawanshi
for the Applicants.

Smt. A. S. Pai, Public Prosecutor a/w Mr. A. R. Kapadnis, APP
for the Respondent/State.

API Shri Pranshant Kharat, Naupada Police Station, Thane
City, present.

**CORAM : NITIN W. SAMBRE &
 R. N. LADDHA, JJ.**

DATE : JANUARY 13, 2023

P.C.:

1] This Application is taken out by Accused Nos. 2 and 3
under Section 389 of the Cr.P.C. for suspension of sentence and
grant of bail. Both these Accused have suffered conviction and
are awarded punishment of life imprisonment under Section 302
read with Section 149 of the Indian Penal Code. Accused are
also awarded other lesser punishments for offence of lesser
gravity and magnitude.

2] This Court while dealing with prayer of Accused No.2 under Section 389 of Cr.P.C. on 28/06/2018 was inclined to reject the Application and as such Application was withdrawn. However, liberty was granted to Accused Nos. 2, 4 and 5 to apply afresh in the event Appeal is not heard within a period of one year.

3] After aforesaid order, Accused No.4 – Manoj Jairam Sonavane approached this Court vide Criminal Interim Application No.2357 of 2022 seeking relief under Section 389 of the Cr.P.C. and this Court has ordered suspension of sentence and granted bail vide order dated 22/09/2022.

4] In the aforesaid backdrop, Mr. Patil, learned Senior Counsel appearing for Accused Nos. 2 and 3 would urge that in view of liberty granted by this Court by order dated 28/06/2018, Accused No.2 has approached this Court for reconsideration of the case for grant of bail and suspension of sentence, whereas Accused No.3 is claimed to be similarly situated as that of Accused No.4 who is ordered to be released

by this Court on 22/09/2022 by suspending the sentence.

5] So as to substantiate the case on merit, Mr. Patil would invite our attention to the testimony of P.W.1 – Jayant Bhoir who is examined at Exhibit-45. Mr. Patil would urge that at the time when offence was committed, Accused No.2 – Manish was not physically present. However, as per eye witness, Manish reached at the spot of incident subsequently. He would further urge that there is no serious role attributed to the Applicant in commission of crime, as it is claimed that Applicant has assaulted deceased Sanjay with kicks and blows. As such, he would urge that both the Applicants having suffered incarceration for a period from 26/07/2014 i.e. almost for more than a period of eight years, they deserve to be released under Section 389.

6] As far as Accused No.3 is concerned, it is claimed that said Accused is identified by P.W. 1 – Jayant at belated stage that too in identification parade. No specific role is attributed to Accused No.3 in commission of crime and the only

incriminating material against him is about discovery of bike which is claimed to have been used for commission of offence and the clothes under Section 27 of the Evidence Act. He would urge that such a piece of evidence may not be considered to the detriment of said Accused No.3 and his case needs to be dealt with at par with Accused No.4 who is already released on bail.

7] Ms. Pai, learned Public Prosecutor appearing for the Respondent/State would oppose the prayer. She has tried to distinguish case of Accused No.3 with that of Accused No.4, as according to her, the old enmity/differences between deceased Sanjay and Accused No.3 can be inferred from testimony of PW.5 – Suman who is mother of deceased Sanjay. She has invited our attention to Exhibit-71, testimony of PW.5 so as to substantiate the said claim. She would urge that said P.W. 5 has identified accused person i.e. Accused No.3.

8] Apart from above, according to Ms. Pai, very discovery of bike and clothes at the instance of Accused No.3 viz. Nilesh

Katare is sufficient enough to prima facie connect him to the offence in question. Apart from above, she would urge that there are criminal antecedents against Accused No.3 which are as under:

Sr.No	Crime No.	Sections
1]	592/1998	Sections 143, 147, 148, 149, 324, 504 of IPC.
2]	415/1999	Sections 147, 148, 149, 307, 302, 324 read with section 25(1) of Indian Arms Act read with Section 37(1), 235 of Bombay Police Act
3]	413/2008	Sections 323, 324, 34 of IPC.
4]	72/2009	Sections 143, 147, 148, 149, 452, 504, 506, 427 of IPC.
5]	295/2014	Sections 302, 324, 323, 143, 147, 148, 149, 427 of IPC.

As far as Accused No.2 is concerned, she would urge that there is direct evidence available on record against the said Accused and has drawn attention of this Court to the testimony of P.W. 1 – Jayant to that effect. She would further urge that Accused No.2 has criminal antecedents. According to her, after both the Accused were released on parole, they having surrendered late, another offence is registered against them. As such, she would urge that Application of both the Accused is liable to be

rejected. The criminal antecedents which are sought to be pressed into service against Accused No.2 so as to substantiate case for rejection of bail, are as under:-

Sr.No	Crime No.	Sections
1]	528/1998	Sections 323, 324, 34, 504 of IPC.
2]	592/1998	Sections 143, 147, 148, 149, 324, 504 of IPC.
3]	415/1999	Sections 147, 148, 149, 307, 302, 324 of IPC read with Section 25(1) of Indian Arms Act read with Sections 37(1), 135 of Bombay Police Act.
4]	60/2005	Sections 324, 34 of IPC.
5]	64/2007	Sections 143, 147, 148, 149, 323, 324, 427, 504, 506, 336, 337 of IPC.
6]	413/2008	Sections 323, 324, 34 of IPC.
7]	72/2009	Sections 143, 147, 148, 149, 452, 504, 506, 427 of IPC
8]	295/2014	Sections 302, 324, 323, 143, 147, 148, 149, 427 of IPC.
9]	173/2022	Section 224 of IPC.

9] We have considered the submissions.

10] As far as Accused No.3 is concerned, fact remains that incriminating material available on record against him is that discovery of bike and clothes. The fact about his direct participation in the commission of alleged offence cannot be

inferred from testimony of P.W. 1 – Jayant. As such, the case of Accused No.3 – Nilesh Khandu Katare can be considered at par with Accused No.4 – Manoj Jairam Sonavane who is ordered to be released by this Court on 22/09/2022. This Court is also required to be sensitive to the fact that said order directing release of Accused No.4 is not questioned till this date. As far as antecedents against Accused No.3 are concerned, said Accused has suffered conviction in Crime No.415/1999 for a period of one year, whereas for other offences, we are informed that same are pending and in some he is already acquitted.

11] In the aforesaid backdrop, in our opinion, case of Accused No.3 deserves benefit of Section 389 of the Cr.PC., particularly when he is languishing in jail for more than almost eight years.

12] As far as case of Accused No.2 is concerned, we have carefully gone through testimony of P.W. 1 – Jayant. It appears that Accused No.2 – Manish and his brother were

having some enmity with deceased Sanjay who was an eye witness to one of the offences i.e. murder of Afzal. As such, there appears to be grudge against deceased Sanjay by said Accused No.2 and his brother, the main Accused Mangesh. P.W. 1 – Jayant in categorical terms has stated that the Applicant/Accused No.2 even if has arrived later in point of time on the spot of incident, he has assaulted deceased Sanjay not only with kicks and blows but also with iron pipe. Said testimony implicates Applicant/Accused No.2 for having direct involvement in commission of crime in question. Apart from above, Applicant/Accused No.2 has suffered conviction pursuant to Section 149 as both i.e. his brother and he had formed unlawful assembly alongwith other accused persons and committed an offence in question.

13] Apart from above, if we appreciate criminal antecedents against Accused No.2, since 1998 till July, 2022, said Accused is involved in number of serious offences, including that of one punishable under Sections 302, 307, 327, 324 etc. The said conduct of the Applicant/Accused

No.2, in our opinion, speaks of his criminal mind and intention of getting himself involved in various offences causing bodily injuries to the victims.

14] In the aforesaid backdrop, what can be noticed is, not only strong evidence in the form of testimony of P.W. 1 and eye witness is available against Accused No.2 for establishing his direct involvement in commission of serious offence but his involvement in other similar type of offence from the aforesaid criminal antecedents is also required to be taken into account.

15] As such, for the reasons recorded hereinabove, prayer moved by Accused No.2 viz. Manish Devidas Jadhav for ordering his release under Section 389 of the Cr.PC. stands rejected.

16] As far as Accused No.3 – Nilesh Khandu Katare is concerned, it is directed that sentence against him is suspended and he is ordered to be released on bail on

executing P. R. Bond in the sum of Rs 30,000/- with one or two local sureties in the like amount. It is directed that said Accused shall keep himself away from revenue jurisdiction of Thane District till decision of Appeal. In case if said Accused is found to be involved in issuing threats to the prosecution witnesses, liberty to the prosecution to move for cancellation of his bail.

17] Application of Accused No. 3 - Nilesh Khandu Katare is allowed in the above terms.

18] Application is accordingly disposed of.

(R. N. LADDHA, J.)

(NITIN W. SAMBRE, J.)