



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3975 OF 2023
IN
CRIMINAL APPEAL NO. 642 OF 2019

- | | |
|------------------------|--------------------------|
| 1. Sagar Prabhu Ghule | ... Applicants |
| 2. Subhash Bhima Pawar | (Accused nos. 12 and 15) |

Versus

The State of Maharashtra and Another	... Respondents
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WITH
INTERIM APPLICATION NO. 3976 OF 2023
IN
CRIMINAL APPEAL NO. 727 OF 2019

Rajendra @ Rajabhau Subhash Pawar	... Applicant (Accused no. 5)
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Versus

The State of Maharashtra and Anr.	... Respondents
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WITH
INTERIM APPLICATION NO. 3695 OF 2023
IN
CRIMINAL APPEAL NO. 801 OF 2019

- | | |
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| 1. Sagar Bharat Pawar | ... Applicants |
| 2. Nitin Laxman Pawar | (Accused nos. 6 and 9) |

Versus

The State of Maharashtra and Anr.	... Respondents
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Mr. Priyal G. Sarda a/w. Ms. Seema S Dighe for the Applicants in IA/3975/2023, IA/3976/2023 and IA/3965/2023.

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

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

DATE : 1st NOVEMBER 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. Learned counsel for the applicants seeks bail on the ground of parity. He submits that the role of the aforesaid applicants-original accused nos. 5, 6, 9, 12 and 15 are at par with co-accused no. 7 – Anil Babu Pawar, accused no. 8 – Babu Bhima Pawar and accused no. 11 – Santosh Tukaram Pawar. He submits that the said co-accused nos. 7, 8 and 11 had been enlarged on bail by this court vide order dated 7th October 2023.

5. Learned APP does not dispute the said fact that the role of the applicants in the aforesaid applications are at par with co-accused nos. 7, 8 and 11 who have been enlarged on bail.

6. 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.

7. 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.

8. 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. Admittedly TIP has not been held. In fact, the said witness has not even identified the applicants in the court.

9. 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.

10. 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.

11. It is informed that there are 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.

12. Having perused the order dated 7th October 2023 by which the co-accused nos. 7, 8 and 11 have been enlarged on bail and having regard to what is stated aforesaid and having considered the evidence qua the applicants, the applications are allowed and 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.