

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APPA) NO. 281/2023 IN
CRIMINAL APPEAL NO. 160/2023
(George Anthony Robert Francis Vs. State of Maharashtra)
with
CRIMINAL APPLICATION (APPA) NO. 31/2023 IN
CRIMINAL APPEAL NO. 264/2022
(Rahul s/o. Satish Ladekar Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

APP No. 281/2023

Mrs. Rakhi Sarkar, Advocate for applicant
Mr. A. Kadukar, APP for non-applicant/State.

APP No. 31/2023

Mr. R.M. Daga, APP for applicant.
Mr. A. Kadukar, APP for non-applicant/State.

CORAM: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATED : 24/04/2023.

Heard.

2. Both applications are for seeking suspension of execution of sentence which are of accused No. 1 Rahul and accused No. 3 George. Both along with co-accused Parikshit were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life in Sessions Trial Case No. 451/2018. Both are claiming suspension on account of inadequacy of material and improbable reasons of the Trial Court and rule of parity. The State resisted both applications by contending that there is direct evidence of PW-3 Mahesh and oral dying declaration proved through PW-1 Shalini.

3. This Court has suspended the execution of sentence of accused No. 2 Parikshit in Criminal Application (APPA) No. 812/2022 in Criminal Appeal No. 348/2022 vide order dated 18.10.2022. It was noted that though there was oral dying declaration, however deceased was alive for five days, but neither written dying declaration was recorded nor material was brought to show the inability. It is submitted that PW-3 has stated about the occurrence, but there happens to be omission on material aspect. Besides that, we have taken through the cross-examination of PW-3 which indicates that, on the following day of the occurrence, they were confronted with the Police, but there was no discloser. Besides PW-3, there is no eye-witness to the occurrence. No sharp aged weapons were used in commission of offence. It is argued that there is delay in recording statement of material witness PW-3. According to the applicants, presence of PW-3 on the spot is doubtful as well as the incident took place in dark hours. It is pointed that oral dying declaration is totally an improvement in the evidence.

4. Upon the same material, we have thought it fit to suspend the sentence of co-accused Parikshit. As regards the applicant George is concerned, the rule of parity would squarely applied. Though there is limited variation in respect of applicant Rahul, however the worth of evidence of PW-3 requires reconsideration in above background. The appeal will take its own time for disposal. Therefore, the case of suspension has been made by both of them.

5. In view of above, execution of substantive sentence passed in Sessions Trial Case No. 451/2018 is suspended till disposal of appeal in respect of both applicants namely George Anthony Robert Francis and Rahul s/o. Satish Ladekar. In the meantime time, the applicants shall be released on bail on their furnishing P.R. Bond of Rs. 25,000/- with one or two surety in the like amount each.

6. The Trial Court shall issue release warrant after ensuring the deposit of entire fine amount of each of them.

7. Both applications stands disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane