

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO.413 OF 2023
IN CRIMINAL APPEAL NO. 248 OF 2023

Shankar Nathulal Solanki

..vs..

State of Maharashtra

AND

CRIMINAL APPLICATION NO.416 OF 2023
IN CRIMINAL APPEAL NO. 250 OF 2023

Devilal @ Deva Natthulal Solanki

..vs..

State of Maharashtra

AND

CRIMINAL APPLICATION NO.417 OF 2023
IN CRIMINAL APPEAL NO. 251 OF 2023

Suraj s/o Chetan Rathod

..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

Shri Arjun Bobde, Advocate for the applicants.
Shri Thakre, A.P.P. for the non-applicant/State.

CORAM : VINAY JOSHI AND BHARAT P. DESHPANDE, JJ.
DATED : 03/05/2023.

Heard.

2. These applications are of accused no.1 - Shankar s/o Nathulal Solanki, accused no. 2 – Devilal @ Deva Natthulal Solanki and accused no. 3 – Suraj s/o Chetan Rathod seeking suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure.

3. All of them have been convicted by the Trial Court in Special Atrocities Case No.56/2018 for the

offence punishable under Section 302 read with Section 149 of the Indian Penal Code. Besides that they have also been convicted for some other offences of the Indian Penal Code.

4. The applicants have claimed suspension on various ground like long incarceration for near-about 5 years, inconsistency in evidence etc. Moreover, it is submitted that the medical evidence does not support the version of eye-witnesses, and independent witnesses have not been examined. The applicants have also claimed bail on the ground of parity with co-accused No.6 – Mikhan s/o Natthulal Salad who has been released after suspension in Criminal Application (APPA) No.436 of 2023 vide order dated 25/04/2023 passed by this Court.

5. Learned A.P.P. has countered the submission by stating that there are 4 to 5 eye-witnesses who have specifically stated that applicants were holding Axe/Sword and were very much partaked in the incident. Moreover, it is submitted that the applicants have shared common object, and therefore, with the aid of Section 149 of the IPC they are equally responsible for the acts committed by others.

6. With the assistance of both sides, we have examined the entire material, in particular we have gone through the evidence of eye-witness including PW4 – Manisha Madakwar, PW6 – Mahendra Kanoje, PW7 – Lalita Meshram, PW8 – Indrapal Madakwar, PW11 – Priyanka Meshram (informant), PW12 – Madhuri

Wasnik, PW13 – Vijay Wasnik and PW14 – Vinod Jadhav.

7. Besides that we have gone through the postmortem examination report²⁸. By and large most of the witnesses have stated that the applicant – Devilal @ Deva Natthulal Solanki was holding Axe whilst applicants - Shankar and Suraj were holding Sword at the relevant time. The witnesses though stated that applicants have participated in the assault, however stated that rest of the co-accused beat deceased Nikhil by means of iron road and wooden stick.

8. Contextually, we have seen the postmortem notes in particular column no.17 which describes the surface wounds and injuries. Though there are 28 injuries however all the injuries are either lacerated wounds or contusions. The Medical Officer has opined the cause of death as 'death due to head injury' as a result of injury nos.1 to 8 stated in column no.17. We have examined these vital injuries which are lacerated wounds. *Prima facie*, we are unable to comprehend the version of eye-witnesses about use of sharp edged weapons with the injuries sustained by the deceased.

9. Learned Counsel for the applicants has *prima facie* made a point for raising doubt about use of the weapons by the applicants which they were allegedly holding at the relevant time. Moreover, we have been taken through the weapon query report wherein it has been expressed by the Medical Officer that all injuries were caused by hard and blunt object. The Medical

Officer has ruled out the possibility of use of Axe in the occurrence. *Prima facie*, we find substance in this submissions and thus, it remains to be aspect of vicarious liability.

10. Learned Counsel for the applicants would submit that the incident occurred in dark hours. For this purpose, we have been taken through some of the portion of cross-examination of witnesses. The assailants are known to the witnesses and incident took in residential locality, and therefore, we do not wish to delve on this aspect. It is argued on the basis of admissions given in cross-examination that several people have gathered on the spot still the prosecution chooses to examine the relative witnesses. True the independent witnesses are not examined but that is not the requirement of law. Certainly, the evidence of interested witnesses has to be scrutinized with care and caution but despite availability of other witnesses, the examination of friends and relatives is a matter of appreciation at the time of final arguments.

11. Co-accused – Mikhan, who was allegedly present at the time of occurrence and named by witnesses, has been released on bail in Criminal Application (APPA) No.436 of 2023 by this Court. It is not the prosecution case that the said order has been questioned before the Apex Court. The applicants are behind the Bars for near-about five years. The appeal will take sometime for its disposal in accordance with law.

Particularly, having regard to the nature of allegations in context with medical evidence, we find that an arguable case has been made out. In such circumstances, the position would become irreversible if the applicants succeeds in the appeal. In view of the above facts and circumstances, we are inclined to exercise our judicial discretion in suspending the sentence of above applicants.

12. In view of above, the application is allowed. The execution of substantive sentence passed in Special Atrocities Case No.56 of 2018 to the extent of applicants - Shankar s/o Nathulal Solanki, Devilal @ Deva Natthulal Solanki and Suraj s/o Chetan Rathod shall stand suspended till the final disposal of the appeal.

13. In the meantime, the applicants - Shankar s/o Nathulal Solanki, Devilal @ Deva Natthulal Solanki and Suraj s/o Chetan Rathod shall be released on bail on their furnishing P.R. bond of Rs.25,000/- (Rs. Twenty five thousand) each, with one or two sureties each, in the like amount.

14. The applicants shall attend concerned Police Station on every alternate Sunday in between 10.00am to 12.00 noon till conclusion of the trial.

15. The Trial Court shall issue the release warrant only after ensuring that entire fine imposed against the applicants - Shankar s/o Nathulal Solanki, Devilal @ Deva Natthulal Solanki and Suraj s/o Chetan Rathod has

been paid.

16. The applications stand disposed of accordingly.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

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