



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

CRIMINAL APPLICATION (APPA) NO.415/2023 IN
CRIMINAL APPEAL NO.118/2023

Sheikh Sabir Sheikh Sadiq and another 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

Mr. P R.Agrawal, Advocate for applicants.

Mr. V.A. Thakre, APP assisted by Mr. Anil S. Mardikar, Senior Advocate for non-applicant/State.

CORAM : NITIN W. SAMBRE AND VALMIKI SA MENEZES JJ.

DATED : 26/09/2023

1. This is an application for suspension of sentence and grant of bail to the applicants.
2. Learned counsel for the applicants submits that he is not pressing the application for suspension of sentence for applicant no.2. As such, application of applicant no.2 stands disposed of.
3. In Sessions Trial No.15/2015, the applicant no.1 - Sheikh Sabir Sheikh Sadiq - accused no.1 came to be convicted for an offence punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code.
4. Mr. Agrawal, learned counsel for the applicants, would invite our attention to the role attributed to applicant no.1 particularly from the deposition of PW 1. According to learned counsel for the applicants, the intention/ motive cannot be inferred against applicant no.1 of commission of offence punishable under Section 302 of the Indian Penal Code. Apart from the above, he would urge that the injury suffered by PW 1 - eye witness is lacerated wound. Hence, ingredients of offence under Section 307 of the Indian Penal Code cannot be inferred. As such, the learned counsel for the applicants would urge that the offence under Section 34 of the Indian Penal Code cannot be

termed as an independent offence, and applicant no.1, who was on bail during trial, is entitled for bail during pendency of the appeal.

5. The learned APP Mr. Thakare along with Senior Counsel Mr. Anil Mardikar would urge that the intention of applicant no.1 is to commit the offence and the instigation can be inferred upon appreciating the evidence of PW 1 – Victim - an eye witness. According to him, the quarrel has started by the applicant - Sheikh Sabir and he has used knife in the commission of the offence. There is continuity of the offence, as the deceased Sk.Fahim suffered head injuries. As such, it is claimed that the application be rejected.

6. We have appreciated the submissions.

7. The fact remains that applicant no.1 - Sheikh Sabir Sheikh Sadiq was on bail during the trial. The eye-witness to the incident has suffered lacerated wound, which perhaps has prompted the prosecution to invoke the provisions of Section 307 of the Indian Penal Code. The weapon used in the commission of the offence is knife and in absence there being any incised wound, the intention/motive needs to be looked into.

8. Apart from the above, as far as the offence under Section 302 of the Indian Penal Code is concerned, we hardly see any evidence of instigation on the part of the applicant no.1.

9. That being so, in our opinion, the applicant no.1 is entitled for the relief.

10. Sentence of the applicant no.1 stands suspended. The applicant no.1 is directed to be admitted to bail on the same terms and condition, on which he was released during trial.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)