

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

CRIMINAL APPLICATION (APPA) NO. 564 OF 2023

IN

CRIMINAL APPEAL NO. 228 OF 2023

Ramesh Nathulal Solanki

Vs.

State of Maharashtra, PSO, PS Shanti Nagar, Nagpur

AND

CRIMINAL APPLICATION (APPA) NO. 555 OF 2023

IN

CRIMINAL APPEAL NO. 312 OF 2023

Yash @ Guddu s/o Harish Lakhani

Vs.

State of Maharashtra, Thru. PSO, PS Shanti Nagar, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.M. Daga, Advocate for applicant in Cri. Appeal
No.228/2023.

Mr. C.R. Thakur, Advocate for applicant in Cri. Appeal
No.312/2023.

Mr. V.A. Thakare, APP for respondent/State.

**CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.**

DATE : 14.06.2023.

Both applications are of convicted
accused namely Ramesh Solanki (Cri. Application
(APPA) No.564/2023) and Yash Lakhani (Cri.
Application (APPA) No.555/2023) seeking

suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure. After full-fledged trial total seven accused have been convicted for the offence punishable under Section 302 read with 149 of the Indian Penal Code and sentence to suffer imprisonment for life.

2. Besides usual grounds like inadequacy of material, incorrect appreciation of evidence, variance in the statements of eye witnesses, the suspension is claimed on the ground of parity primely with co-accused namely Shankar. Undeniably accused Shankar along with Devilal @ Deva and Suraj had applied for suspension and grant of bail which has been allowed by this Court on merits vide common order dated 03.05.2023. It is not the contention of the State that the said order has been challenged.

3. Learned APP would submit that there are four to five eye witnesses to the incident who have specifically stated about the role of applicant Ramesh holding the weapon and participating in the crime. Moreover, it is submitted that with the aid of Section 149 of the Indian Penal Code they are equally responsible for the acts committed by co-accused in furtherance of the common crime.

4. 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 PW-14-Vinod Jadhav.”

5. While suspending the sentence of co-accused Shankar, we have noted the discrepancy in oral and medical evidence coupled with the query report of the expert. In the light of the said situation, we have re-examined the evidence of material witnesses. It has been stated by eye witnesses that Ramesh, Shankar and Suraj were holding sword whilst Shankar and Ramesh have assaulted by means of sword. We have minutely examined the role of Shankar along with the evidence on which we thought it fit to grant suspension. We see no distinguishing factor in the case of Ramesh with Shankar. The learned APP has not pointed any other material to distinguish the case of Ramesh from the Shankar. Therefore, there is no reason to deny the rule of parity.

6. So far as applicant Yash Lakhani is concerned, his role is mostly stated to be about presence on the spot. One of the witnesses stated that he dealt a blow but nothing specific about that. Moreover, the role assigned to Ramesh and Shankar is grave and thus, he is equally entitled for the same treatment. Already sentence of rest of the accused has been suspended. Having regard to all about facts, we deem appropriate that the matter requires reconsideration and thus, the case is made out on the ground of parity with Shankar. In the circumstances, both applications deserved to be allowed.

7. 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 **Ramesh Nathulal Solanki, and Yash @ Guddu s/o Harish Lakhani** shall stand suspended till the final disposal of the appeal.

8. In the meantime, the applicants – **Ramesh Nathulal Solanki and Yash @ Guddu s/o Harish Lakhani** 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.

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

10. The Trial Court shall issue the release warrant only after ensuring that entire fine imposed against the applicants – **Ramesh Nathulal Solanki, and Yash @ Guddu s/o Harish Lakhani** has been paid.

11. The applications stand disposed of accordingly.

JUDGE

JUDGE