

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

CRIMINAL APPLICATION NO. 694 OF 2022

IN

CRIMINAL APPEAL NO. 543 OF 2022

Rajesh Govind Mandwe

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri P.V. Navlani, advocate for the applicant.
Mrs. Deshmukh, A.P.P. for the respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 20/01/2023.

Heard.

2. Conviction of accused no.6 Rajesh Mandwe led him to apply for suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure. The applicant (Rajesh Mandwe) was arrested in Crime No.360 of 2015 registered with City Kotwali Police Station, District Amravati for the offence punishable under Sections 302, 307, 324, 143, 147, 148 and 149 of the Indian Penal Code. The prosecution has examined in all 18 witnesses including three eye-witnesses in the Trial Court. Having regard to the nature of evidence, the Trial Court convicted all six accused in aforesaid crime.

3. The applicant Rajesh Mandwe was on bail during the Trial. It is submitted that, the prosecution witnesses have assigned the role of mere presence of the accused on the spot. At the relevant time, the applicant

was not holding any weapon nor there is specific evidence to show that he made a deadly assault. Particularly, it has been pointed out that co-accused Nilesh Athawale (accused no. 2) has similarly applied for suspension in Criminal Application No.1043 of 2019 to this Court. Considering the entire material, this Court vide order dated 29.04.2022 has suspended the execution of sentence of co-accused Nilesh Athawale. According to the applicant, the role assigned to him as well as co-accused Nilesh are somewhat similar and therefore, he is also entitled for equal treatment.

4. With the assistance of both sides we have gone through the entire evidence. Undisputedly, the prosecution has examined three eye-witnesses, who are PW1-Tanvir Alam Sayyad Niyaz Ali, who is the informant, PW12 -Sayyad Masrur Alam Sayyad Niyaz Ali @ Baba and PW13 Suresh Vasantrao Rajgure. We have considered the evidence of these witnesses in detail. PW13 Suresh has not assigned any role to the applicant Rajesh nor stated about his presence on the spot. We have gone through the evidence of PW1 Tanvir, who is the informant. He has stated that at the relevant time, the applicant Rajesh was present and was instigating his fellow colleagues i.e. the only role stated of accused Rajesh. Contextually, we have gone through the First Information Report lodged by PW1 Tanvir. However besides name of accused no. 1 Umesh Athawale, he did not state names of other assailants. Though PW1 Tanvir deposed about the instigation by the applicant Rajesh

Mandwe, however it is pointed out that it was a pure omission. We have gone through the evidence of third eye-witness, who is PW12 Sayyad Masrur@ Baba. Though he has stated about the presence of the applicant, however the role assigned is of slapping at his face. It is argued that the rest witnesses have not corroborated the said statement.

5. We have also examined the role of accused no. 2 Nilesh Athawale on the basis of which parity has been claimed. We find that the allegations against Nilesh Athawale are also of giving a slap and not beyond that. Moreover, we have seen that presence of Nilesh was found in CCTV footage, however there is no material to show that the applicant Rajesh was seen in CCTV footage. This Court while suspending sentence of co-accused Nilesh Athawale has considered that Nilesh has convicted mainly with the aid of Section 149 of the Indian Penal code. The similar analogy would apply for the applicant also. Apparently, the applicant was not holding any dangerous weapon, nothing was seized at his instance and besides giving a slap no other role is against him. In view of that, we find that the applicant Rajesh has made out a case on merits as well as on parity with Nilesh.

6. In the circumstance, the execution and implementation of substantive sentence passed in Sessions case no.36 of 2016 of applicant shall stand suspended during the pendency of the appeal.

7. In the meantime, the applicant Rajesh Govind

Mandwe shall be released on bail on his furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

8. The applicant is directed to report to the City Kotwali Police Station, District Amravati on first Monday of each alternate month during 10.00 am to 12.00 noon till the conclusion of trial.

9. The Trial Court shall ensure deposit of entire fine amount before issuing release warrant.

10. The application stands disposed of accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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