



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

CRIMINAL APPLICATION (APPA) NO. 872 OF 2023
IN
CRIMINAL APPEAL NO. 348 OF 2023

Baban Wamanrao Shitole

..VS..

State of Maharashtra through Police Station Officer, P.S. Murtizapur, District Akola.

AND

CRIMINAL APPLICATION (APPA) NO. 849 OF 2023
IN
CRIMINAL APPEAL NO. 522 OF 2023

Ganesh Vasanttrao Shitole

..VS..

State of Maharashtra through Police Station Officer, P.S. Murtizapur, District Akola.

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for appellant/applicant in Cri.Appeal No.348/2023.

Mr. V.R. Deshpande, Advocate for appellant/applicant in Cri.Appeal No.522/2023.

Mr. S.S. Doifode, APP for respondent/State.

Mr. S.V. Sirpurkar, Advocate (assist to prosecution).

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATED : 09.10.2023

Heard.

2. Criminal application No.872/2023 is filed by the accused No.1 - Baban Shitole and Criminal application No.849/2023 is filed by the accused No.2 - Ganesh Shitole, seeking suspension of execution of sentence passed by trial Court in Session Trial No.191/2014,

whereby the applicants along with others were convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code (IPC).

3. The learned Counsel for the applicants primely canvased that co-accused Pankaj Dongardive (accused No.8) and another co-accused Pramod Chavan (accused No.5) have been released on bail and therefore, on the ground of parity the applicants deserve for equal treatment. Particularly, it is submitted that the role of Pankaj was grave than the applicants and thus the applicants deserve for grant of bail. Besides that, we have been gone through the nature of evidence and our attention has been invited to the advanced age of applicants while claiming suspension.

4. Learned Additional Public Prosecutor Mr. Doifode as well as learned Counsel Mr. Sirpurkar for informant resisted these applications by pointing the incriminating material. Moreover, it has been submitted that names of co-accused Pankaj and Pramod were not stated in FIR which rather weighed this Court for suspending their sentence. According to them, however, the applicants names were disclosed on the date of incident as one of the assailant and therefore, the rule of parity would not apply.

5. With the assistance of learned counsel for the respective parties, we have gone through the entire material on record.

6. As regards to the case of accused No.1 – Baban is concerned, first to deal the ground of parity, we have gone through the order dated 28.07.2023 by which co-accused Pramod was released on bail. Particularly, we note that the name of Pramod was not stated by first informant, meaning thereby he was falling in the category of unknown assailant. We have taken into account that prior Test Identification Parade was not conducted and thus, on such peculiar facts, the benefit was accorded to Pramod. The case of applicant totally stands on different footing as his name was specifically disclosed in FIR as one of the assailant armed with stick.

7. So far as, release of another co-accused Pankaj is concerned, this Court in its order dated 13.09.2023 has basically released Pankaj by applying the rule of parity with Pramod which we have dealt in above para. Moreover, it is to be noted that name of Pankaj was also not mentioned in the FIR, which is not the position in respect of present applicant.

8. The entire material discloses that on the date of incident, first informant has stated the names of four assailants in which, the applicant Baban was figured. Besides that, it is the informant's contention in the FIR itself that applicant has used a stick in the assault. Contextually we have gone through the Postmortem Report which does show corresponding injury which could be caused by stick. Though, the Medical Officer has expressed that the cause of death is multiple stab

injuries, however, we should not miss that the provisions of Section 149 of the IPC were invoked making all members equally responsible for the act. Besides that, the stick is recovered from the applicant Baban as well as his cloths were seized. The trial Court has lifted the presumption of innocence to some extent which is for consideration.

9. In view of above, it cannot be said that the applicant Baban is entitled for rule of parity. Having regard to the nature of evidence, we are not inclined to entertain the application hence, the Criminal Application No.872/2023 is **rejected**.

10. As regards to the case of the accused No.2 – Ganesh is concerned, equally he claims parity with accused Pramod and Pankaj. We have elaborately dealt above that this Court while releasing them on bail weighed that their names were not disclosed in the FIR. They were stated to be unknown assailants and Test Identification Parade was not taken. Therefore, parity cannot be claimed in the context that applicant's name with the specific weapon is stated in the FIR. We may reiterate that FIR speaks of particularly name of four assailants including the applicant Ganesh. The learned Counsel appearing for Ganesh would submit that though at initial part, the informant stated name of Ganesh, but in later part, the informant said that co-accused Baban along with his associates made assault. According to us, no benefit could be accorded as already name of Ganesh

was stated and just to avoid repetition in later part, in generalize term, the said statement is made which is to be read in context. Other grounds canvased is that though clothes of applicant Ganesh were seized however, there is no seizure of weapon at his ends.

11. *Prima facie*, we are of the opinion that the aspect of seizure is always act in the form of corroborative nature. Since his name was disclosed by in the FIR itself and the evidence was led by the informant about his participation, considering these aspect, we are not inclined to entertain the ground of parity as well as merit too.

12. In view of above, the Criminal Application No.849/2023 is also **rejected**.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)