



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

CRIMINAL APPLICATION (APPA) NO. 930 OF 2023
IN
CRIMINAL APPEAL NO. 580 OF 2022

Munna S/o. Mohan Mahato

..VS..

State of Maharashtra through PSO, P.S. Ambazari, District Nagpur

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 applicant.

Mr. M.J. Khan, Additional Public Prosecutor for respondent/State.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

DATED : 19.10.2023

Heard.

2. This is an application seeking suspension of execution of sentence passed in Sessions Trial No.60/2021 by District Judge-1 and Additional Sessions Judge, Nagpur on 09.06.2022, whereby the applicant (accused No.3 – Munna Mohan Mahato) was convicted and sentenced to suffer imprisonment for life and fine of Rs.5,000/- and in default to suffer further imprisonment of six months for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC), so also rigorous imprisonment for ten years along with fine of Rs.3,000/- and in default to suffer further imprisonment of three months for the offence punishable under Section 449 read with Section 34 of the IPC and

rigorous imprisonment for one year and fine of Rs.1,000/- and in default to suffer further imprisonment of one month for the offence punishable under Section 323 read with Section 34 of the IPC.

3. The applicant is seeking suspension on account of inadequacy of material, his advanced age and strong possibility of false implication. On the other hand, learned APP resisted this application on the ground that there are three eye-witnesses consistently specifying the role of the applicant.

4. At the instance of report lodged by Dinesh Naharkar (brother of deceased), the crime has been registered. It is prosecution's case that on 04.10.2020 at around 10.30 pm. all three accused have barged into the house of informant. The co-accused Chetan and Ramu are sons of the applicant - Munna. They started to abuse informant's nephew Ritesh. Deceased Ashok has intervened, to whom the applicant Munna and Chetan caught hold. At the relevant time, Ramu @ Chunni (Accused No.1) took out knife and inflicted repeated blows. Ashok sustained multiple injuries, which resulted into death.

5. The prosecution has led evidence of several witnesses however, direct evidence of P.W.-1 Dinesh, P.W.-3 Ritesh and P.W.-5 Nikita has been relied. All of them equally stated about the happening of the occurrence. The role assigned to the applicant Munna

(father) is of holding the deceased during the quarrel. The allegation of inflecting knife blows is against the co-accused Ramu @ Chunni. It is submitted that the incident was happened on the spur of movement in which, the co-accused took out knife therefore common intention cannot be inferred. The said submission needs consideration at appropriate stage.

6. The applicant's learned counsel attracted our attention to the MLC Report pertaining to the informant Dinesh. It is pointed out that within one hour from the occurrence, informant went to the hospital for treatment where, he has stated about the assault by unknown persons. Catching the same theme, it has been argued that the said circumstance favours applicant's submission about false implication at belated stage. There is no dispute that as per the evidence of material witnesses, the applicant participated in the occurrence and his role is restricted to holding deceased during quarrel. It is brought to the notice that though there were blood-stains on the clothes of remaining co-accused Ramu @ Chunni and Chetan, however, no blood was detected on the clothes of applicant Munna. These aspects needs consideration on the background of the history stated by the informant regarding assault by unknown persons.

7. The appeal will take its own time for disposal in accordance with law. Considering the role played by the applicant and nature of material collected against him, we deem it appropriate to suspend execution of sentence,

as in case of success in appeal, the position would become irreversible. In view of that, following order is passed :-

- (i) Criminal Application is allowed and disposed of.
- (ii) The execution of substantive sentence passed in Sessions Trial No.60/2021 by District Judge-1 and Additional Sessions Judge, Nagpur on 09.06.2022 for the offence punishable under Sections 302, 449 and 323 read with Section 34 of the IPC, as regards applicant - Munna S/o. Mohan Mahato (accused No.3) shall stand suspended till final disposal of appeal.
- (iii) In the meantime, the applicant - Munna S/o. Mohan Mahato shall be released on bail on his furnishing P.R. bond of Rs.25,000/- with one solvent surety in the like amount.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)