



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.327 OF 2024
IN
CRIMINAL APPEAL NO.65 OF 2024**

1. Amol s/o Dilip Nehe,
 2. Kishor s/o Lahanu Nehe,
 3. Vasant s/o Lahanu Nehe,
 4. Suresh s/o Lahanu Nehe,
 5. Sachin s/o Vasant Nehe,
 6. Prasad s/o Prakash Nehe,
 7. Akash s/o Rohidas Chechare,
 8. Mayur s/o Rohidas Chechare,
 9. Jagannath s/o Kisan Pandgale
- ..Applicants

Vs.

The State of Maharashtra ..Respondent

Mr.Rajendrraa Deshmukkh, Senior Advocate i/b. Mr.Vishal A. Chavan
and Mr.Devang R. Deshmukh, Advocate for applicants

Ms.U.S.Bhosale, APP for respondent no.1

Mr.H.U.Dhage, Advocate for respondent nos.2 and 3

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : MAY 06, 2024**

ORDER :-

This is an application by the convicts for suspension of sentence awarded by learned Addl. Sessions Judge, Kopargaon, Dist. Ahmednagar, in Sessions Case No.49 of 2021, vide judgment and order dated 31.10.2023, for the offences punishable under Sections 302 and 307 r/w. 149, and Section 148 of Indian Penal Code.

2. In short, the case of prosecution is that there is civil dispute over agricultural land between the informant and his family on one hand and the applicants and their family, on the other. On 31.12.2020, when the informant (PW 1 - Kishor) and his brother Gaurav (deceased) were returning on motorbike after attending a programme, the applicants assaulted the informant and deceased Gaurav with weapons like sickle, iron rod and spade, etc. Due to the injuries suffered, the informant's brother Gaurav died. The incident was reported to the police. Crime came to be registered and the applicants were tried.

3. Learned senior counsel for the applicants, on instructions, submits that he is not pressing the application of applicant no.5 - Sachin s/o Vasant Nehe. He submits that after the incident, the informant went to the concerned police station, however, he did not lodge the report. He submits that the informant lodged the report on the next date in the evening. There was sufficient time to concoct the story. He submits that a typed report was filed by the informant to the concerned police station and therefore, the same cannot be accepted or believed. The weapons recovered at the instance of the applicants did not bear blood stains. He submits that the cause of death is shown as injury on head, which

is attributed to applicant no.5, whose application has not been pressed. He submits that the applicants, except applicant no.5, were on bail during trial. Learned senior counsel, therefore, urged for allowing of the application.

4. Learned APP for respondent no.1 and learned counsel for respondent nos.2 and 3, on the other hand, submits that the case is based on the testimonies of eye-witnesses. The informant is injured witness. The applicants assaulted with weapons like sickle, iron rod and spade, etc. They submit that though the death is due to head injury, the post mortem report shoes that the injuries are thirteen in number on the dead body of Gaurav. They submit that the applicants do not deserve suspension of sentence and bail.

5. Perused the paper book. The incident, as per the report lodged by PW 1 – Kishor (informant), took place on 31.12.2020 at around 06.30 p.m. It is not in dispute that there are station diary entries, which read as under:-

Ex-134 – General Diary Details

यावेळी नोंद घेण्यात येते कि किशोर अनिल कडू, वय 22, धंदा शिक्षण, रा.तिसगाव प्रवरा, तालुका राहता हे लोहगाव शिवारात गट न ६० मध्ये जमिनीच्या वादावरून मारामारी झाल्याने पोलीस स्टेशनला आले असता त्यांची फिर्याद घेणं असताना त्यांनी वाढीव हकीगत सांगत असल्याने त्यांना खरी परिस्थिती आम्हाला सांगा असे म्हणालो असता व तसेच तुमच्या फिर्यादीच्या हकीगती संदर्भात मी आमच्या वरिष्ठांना फोन करून कल्पना देतो व त्यांच्या आदेशाप्रमाणे तसेच तुम्ही आमच्या वरिष्ठांशी सदर

घटनेबाबत चर्चा करून बोलून घ्या. त्यांच्या आदेशाप्रमाणे तुम्ही सांगाल तशी फिर्याद घेत आहे असे म्हणल्यावर किशोर अनिल कडू व त्याचा सोबत असणारे त्यांचे इतर नातेवाईक म्हणाले आम्हाला आता फिर्याद द्यावयाची नाही आम्ही गुळवे साहेबांशी बोललो आहे त्यांनी सांगितले कि आता फिर्याद देऊ नका आपण उद्या सविस्तर फिर्याद देऊ असे आम्हास सांगितले व आम्हास म्हणाले तुमच्या बदल आम्हाला काही राग नाही आम्ही विचारपूर्वक निर्णय घेऊन आता फिर्याद देत नाही आम्ही आता घरी जात आहोत. उद्या आम्ही पोलीस स्टेशनला येऊन पाटील साहेबांची भेट घेऊन त्यांना सविस्तर हकीगत सांगून तक्रार दाखल करू असे कळविल्याने नोंद.

Ex-135 – General Diary Details

यावेळी पी एम टी हॉस्पिटल लोणी येथून मेमो न २०७१४९२० पेशंट नाव गौरव अनिल कडू वय २४ वर्ष रा. तिसगाववाडी, ता राहता यास मारामारी दरम्यान मर लागल्याने त्यास पुढील उपचाराकरिता दाखल केले असून पुढील तजवीज पोना नेहल हे करित आहे

6. From the above station-diary entries, it is clear that though the informant had gone to the police station, he stated nothing against the applicants or the incident. What is seen is that the report is lodged on the following day, i.e. 01.01.2021 at 03.51 p.m. and that too, in typed form. From this, we find substance in the submission of learned senior counsel for applicants that there is scope for concoction. The post mortem report shows that the cause of death is 'head injury', which, from the evidence available on record, is attributed to applicant no.5. The other injuries mentioned in column no.17 are abrasions and some contusions. Though the evidence on record show that there was recovery of articles, wooden rod and iron rods at the instance of the applicants, there are no blood stains to link the said articles with the crime.

7. Admittedly, the applicants, except applicant no.5, were on bail during trial. There is no possibility that the appeal will be heard finally in near future.

8. In view of the above, we proceed to pass the following order:-

(i) The application of applicant no.5 - Sachin s/o Vasant Nehe is disposed of as not pressed.

(ii) The application is allowed to the extent of applicant nos.1 to 4 and 6 to 9.

(iii) During pendency of the appeal, the substantive sentence of imprisonment imposed against applicant nos.1 to 4 and 6 to 9 by learned Addl. Sessions Judge, Kopergaon, Dist. Ahmednagar, in Sessions Case No.49 of 2021, vide judgment and order dated 31.10.2023, for the offences punishable under Sections 302 and 307 r/w. 149, and Section 148 of Indian Penal Code, to stand suspended.

(iv) The applicant nos.1 to 4 and 6 to 9 namely, Amol s/o Dilip Nehe, Kishor s/o Lahanu Nehe, Vasant s/o Lahanu Nehe, Suresh s/o Lahanu Nehe, Prasad s/o Prakash Nehe, Akash s/o Rohidas Chechare, Mayur s/o Rohidas Chechare and Jagannath s/o Kisan

Pandgale be released on bail, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one solvent surety each in the like amount.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP