



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 419 OF 2024
IN
CRIMINAL APPEAL NO. 92 OF 2024

1. Ismail @ Shakti Ahemad Shah,
Age : 41 years, Occu. Business,
2. Halimabee Dhoomali Shah,
Age : 65 years, Occu. Household,
3. Shabana Dhoomali Shah,
Age : 39 years, Occu. Household.
All R/o. Kazipura Nala, Jalna,
Taluka and District Jalna.

....Applicants
[Orig. Appellants]

Versus

The State of Maharashtra

....Respondent
[Orig. Prosecution]

.....
Mr. Joslyn Menezes – Advocate for the Applicants
Mr. S. D. Ghayal – Addl. P P for respondent/State
.....

CORAM : R. G. AVACHAT
AND
NEERAJ P DHOTE, JJ.

DATED : 16TH FEBRUARY, 2024

PER COURT : -

1. This is the application for suspension of substantive sentence imposed upon the applicants by the learned Sessions Judge, Jalna vide Judgment and Order dated 13.12.2023 passed in Sessions Case No. 157/2020 as under : -

Sr.No.	Under Section	Sentence
1.	143 of IPC	Rigorous imprisonment for six months and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.
2.	148 r/w 149 IPC	Rigorous imprisonment for one year and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.
3.	452 r/w 149 IPC	Rigorous imprisonment for three years and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.
4.	324 r/w 149 IPC	Rigorous imprisonment for three years and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.
5.	302 r/w 149 IPC	Life imprisonment and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.
6.	316 r/w 149 IPC	Rigorous imprisonment for seven years and fine of Rs. 3,000/- each, in default, simple imprisonment for three months.
7.	427 r/w 149 IPC	Rigorous imprisonment for six months and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.
8.	120-B r/w 149 IPC	Life imprisonment and fine of Rs. 1,000/- each, in default, simple imprisonment for one month.

2. Heard learned advocate for the Applicants and the learned Addl. P. P. for respondent/State. They have taken us through the evidence of PW1 and PW3, who are examined as eye-witnesses to the incident.

3. Learned Additional Public Prosecutor relies upon the judgment in the case of **Omprakash Sahni Versus Jai Shankar Chaudhary & Anr. Etc.** reported in AIR 2023 SC 2202, wherein it has been observed as follows : -

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should

be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. *However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable.* To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

4. It is the case of the prosecution that in the night of 09.08.2020, the applicants and others barged into the house of the first informant and thereafter they brutally assaulted his wife and also caused injury to him. Thereafter, the informant's wife was dragged outside the house and again assaulted by the applicants and others. While scrutinizing the evidence of PW1 and PW3, who are the eye-witnesses to the incident and material witnesses, it is seen that PW1 has attributed the role of assault to the applicants outside the house. Whereas, the PW3 does not attribute any overact to the applicants. It is brought to our notice that in the CCTV footage, these applicants are not seen. It is true that the Conviction is recorded by virtue of Section 149

of the Indian Penal Code. However, it is not disputed that the accused nos. 2, 6, 7, 9, 11 and 12 have been acquitted by the learned trial Court.

5. The evidence of above witnesses i.e. PW1 and PW3 as discussed above, do not show that the applicants have assaulted the deceased with any kind of weapon. *Prima facie* the applicants have arguable case. The applicants were on bail during the trial. The Applicant nos. 2 and 3 are women. In these circumstances of the case, we proceed to pass the following order : -

ORDER

- [i] Criminal Application is allowed.
- [ii] The substantive sentence imposed upon the applicants, namely, Ismail @ Shakti Ahemad Shah, Halimabee Dhoomali Shah and Shabana Dhoomali Shah by the learned Sessions Judge, Jalna vide Judgment and Order dated 13.12.2023 passed in Sessions Case No. 157/2020, is Suspended during the pendency of the present Appeal.
- [iii] The Applicants be released on bail on their furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only), each.
- [iv] Bail before the Trial Court.

6. Criminal Application is accordingly disposed of.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE