



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.421 OF 2024
IN
CRIMINAL APPEAL NO.93 OF 2024

- 1] Avinash @ Bhavdya S/o Laxman Bhalerao
Age : 28 Years, Occu. Business,
R/o Ashok Nagar, Masnatpur,
Chh. Sambhajinagar,
Tq. Dist. Chh. Sambhajinagar.
- 2] Yuvraj S/o Laxman Bhalerao,
Age : 42 Years, Occu. Business,
R/o Ashok Nagar, Masnatpur,
Chh. Sambhajinagar,
Tq. Dist. Chh. Sambhajinagar.
- 3] Sandip S/o Dadarao Nikalje,
Age : 28 Years, Occu. Business,
R/o Ashok Nagar, Masnatpur,
Chh. Sambhajinagar,
Tq. Dist. Chh. Sambhajinagar.
- 4] Akash @ Appasaheb S/o Bhaskar Edke
Age : 36 Years, Occu. Labour,
R/o Shah Nagar, Masnatpur,
Chh. Sambhajinagar,
Tq. Dist. Chh. Sambhajinagar.

... Applicants.

(Orig. Accu. Nos.1,2,5 & 6)

Versus

The State of Maharashtra
Through Police Station Inspector,
City Police Station, MIDC-CIDCO,
Chh. Sambhajinagar City,
Tq. Dist. Chh. Sambhajinagar.

... Respondent.

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Mr. Shrikant G. Kawade, Advocate for Applicants
Mr. N. D. Batule, APP for Respondent – State

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 24th JANUARY, 2024

ORDER :

1. Applicants are seeking suspension of sentence and grant of bail by virtue of conviction recorded by learned Sessions Judge, Aurangabad awarded in Sessions Case No. 320 of 2016 for commission of offence under sections 143, 147, 148 and 325 read with section 149 of Indian Penal Code.

2. It is submitted that, there is false implication. There is improper appreciation of evidence by the learned Sessions Judge and hence appeal has been preferred which is already registered, but judgment under challenge being of December 2023, much more time would be required to hear and decide the same. He further pointed out that, even sentence awarded is for six months and three months respectively, which are to be run concurrently. Therefore, according to him, in view of judgment of Hon'ble Apex Court in the case of ***Kiran Kumar v. State of M.P., 2001 AIR SCW 5130*** sentence being for short term, learned counsel prays for relief as sought.

3. Learned APP submits that, serious offence has been committed and guilt is recorded for forming unlawful assembly and putting sharp weapon to be used. That, if relief as prayed is granted, it is his submission that there is possibility of misuse.

4. On hearing both sides, it seems that, on information lodged by one Kakasaheb on 17.03.2013, crime was registered. There are allegations of being caught hold of and being assaulted by use of wooden rod. Medical evidence suggests fracture injury. Admittedly, sentence awarded is only for six months and three months respectively for each of the offence and to pay fine. Resultantly, considering the same and the law dealt and decided by the Hon'ble Apex court in view of above referred ruling, relief as prayed deserves to be granted. Hence, I proceed to pass following order :

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicants, (1) Avinash @ Bhavdya S/o Laxman Bhalerao, (2) Yuvraj S/o Laxman Bhalerao, (3) Sandip S/o Dadarao Nikalje, (4) Akash @ Appasaheb S/o Bhaskar Edke in Sessions Case No.320 of 2016 by the learned Sessions Judge, Aurangabad on 29.12.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.93 of 2024.
- (iii) The applicants be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) each with two solvent sureties each in the like amount.

- (iv) The applicants shall not commit any criminal activity.
- (v) The applicants shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicants to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.
- (vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)