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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
903 CRIMINAL APPLICATION NO. 574 OF 2024
IN
CRIMINAL APPEAL NO.119 OF 2024**

1. Hanumant Kisan Devkate, **...APPLICANTS**
Age-41 years, Occu-Agri,

2. Rakhmaji Gangaram Devkate
Age-55 years, Occu- Agri

Both R/o. Taradgaon, Tq. Karjat, Dist. Ahmednagar

VERSUS

1. State of Maharashtra **...RESPONDENTS**

2. Dajiram Babarao Shinde

Mr. Sachin Panale, Advocate for the applicants
Mr. N. D. Batule, APP for the respondents/State

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13th FEBRUARY, 2024

PRONOUNCED ON 16th FEBRUARY, 2024

P. C.

1. On account of conviction recorded by the learned Additional Sessions Judge, Shrigonda in Sessions Case No. 149 of 2019 by the judgment and order dated 13-12-2023, the accused have preferred instant application praying to suspend

the sentence and grant bail.

2. In support of the relief, the learned advocate for the applicants submits that though the prosecution had adduced seven witnesses there is no clinching or incriminating evidence. In fact incident is fall out on some civil dispute. Testimony of witnesses are full of materiel, omissions of contradictions, more particularly there is variance in the evidence of ocular medical account.

3. There is a good case in the appeal. Even during trial applicants were on bail. According to him there as much more time would be required to hear and decide the appeal, he prays for suspension of sentence and grant bail during pendency of the appeal.

4. While opposing the application, learned APP pointed out that crime was registered for the offences punishable under Sections 307, 143, 147. 149, 323, 504 and 506 of the Indian

Penal Code. Though there is civil dispute, there are allegations of use of knife and sword i.e. recovery of the same there is eye witness account. Medical evidence also supports the assault. So, he prays to refuse relief of suspension of sentence and grant of bail.

5. After considering the above submission and on going through the record and papers it appears that Karjat police Station registered the offences punishable under Sections under Sections 307, 143, 147. 149, 323, 504 and 506 of the Indian Penal Code.

6. On visiting the evidence of PW-2-Dajiram Shinde who was 80 years old, it is seen that there is a civil dispute on account of land with Rakhmaji Devkate, Chhayta Bhandari, Uttam Bhandari and by virtue of civil litigation the land was in possession of informant PW-2 and he was cultivating the land.

7. He has narrated that on 24-05-2009 at around 12.00

noon while he and his son were sowing maize crop in the field at that time Rakhmaji, Kisan, Limbaji, Bharat and some ladies had came there. They abused, threatened to kill. He has alleged that Hanumant Devkate who was possessing knife stabbed PW-2 on the left side of abdomen, whereas Rakhmaji who was holding sword gave blow on upper side of right ear, whereas other accused by stones.

8. PW-3 seems to be son of PW-2 and he has reiterated the occurrence as like his father. PW-4 seems to be an independent witness. Even according to him while he was working in the field and he heard shouting, he rushed there and saw Rakhmaji, Hanumant, Kisan, Vilas and Limabaji were running away. He also saw Dajiram in injured condition i.e. injuries to stomach as well as head. This witness is marked as present and wife of PW-2. PW-6 is the medical expert and she has noticed CLW on right parietal region as well as stab wound on left renal region of PW-2 Dajiram.

9. Appreciating the evidence of learned trial court by the judgment and order dated 13-12-2023 held accused Hanumant and Rakhmaji guilty for the offences punishable under Sections 307,143, 147, 148, 506 read with Section 149 and sentenced to suffer three years imprisonment and to pay fine till rising. PW-6 while in cross has admitted answer that he has not sure that whether injury No.2 is grievous or not which is allegedly caused to the renal region.

10. Therefore, the appeal which is filed would take long time to be heard. From the operative part it can be gathered that accused were on bail. Hence, above aspect is to be considered and relief as prayed for deserves to be granted.

ORDER

(i) Criminal application stands allowed.

(ii) The substantive sentence imposed on the applicants Hanumant Kisan Devkate and Rakhmaji Gangaram Devkate in Sessions Case No.149/2019 by

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the learned Additional Sessions Judge, Shrigondfa on 13-12-2023 stands suspended till final hearing and disposal of the Criminal Appeal No. 119/2024.

(iii) The applicants be released on PR bond of Rs.15,000/- (Rupees Fifteen Thousand Only) each with two solvent sureties 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

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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 applicant.

(vii) Bail before the trial court.

[ABHAY S. WAGHWASE, J.]

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