



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

**CRIMINAL APPLICATION NO. 876 OF 2023
IN APPEAL/458/2021**

Ramdas S/o. Vitthal Kute
Age: 60 years, Occu.: Agriculturist,
R/o. Lanzi, Tq.Gangapur,
Dist.Aurangabad.Applicant

Versus

The State of MaharashtraRespondent

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Advocate for Applicant in Cri.Appln.No.876/2023 & for
appellant in Cri.Appeal No.458/2021 : Mr.Akshay Tilve and
Mr.S.V.Salunke h/f. Mr.Saud Deshmukh A.N.
Advocate for Appellant in Cri.Appeal No.180/2023 :
Mr.S.B.Kendre h/f. Mr.S.S.Panale
Advocate for assist to PP & for applicant in CRA/281/2022 :
Mr.A.N.Nagargoje
APP for Respondent : Mr.S.M.Ganachari

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 FEBRUARY, 2024
PRONOUNCED ON : 01 MARCH, 2024

ORDER :-

1. This is an application for suspension of sentence and grant of bail as a result of judgment and order passed in Sessions Case No.72 of 2013 by Additional Sessions Judge, Vaijapur, Dist.Aurangabad dated 07-09-2021 recording conviction and guilt for offence under

Sections 143, 147, 148, 307, 324 r/w 149 of the Indian Penal Code (IPC).

2. In support of relief, learned Counsel for the applicant pointed out that this is third application. He pointed out that though earlier, one application was filed, it was withdrawn and not pressed. Second one was rejected, but according to him, thereafter, application of original accused no.2 - Jagannath Vitthal Kute, against whom, there are similar allegations, has been allowed and this Court has granted him bail as well as his sentence has been suspended by order dated 27-06-2023. Therefore, according to him, present applicant, against whom there are similar allegations, is hereby seeking similar relief on the ground of parity. In support of such submissions, learned Counsel took this Court through the order passed by this Court in Criminal Application No.3170 of 2021.

3. As regards to merits are concerned, learned Counsel submits that there is no full-proof or corroborative piece of evidence. Appeal filed by the applicant would take long and considerable time for decision and therefore, in view of above submissions, he prays for suspension of sentence and grant of bail.

4. Learned APP opposed the above application by pointing that this is the third attempt. Earlier this Court had rejected the application on merits by order dated 28-10-2021 wherein there is detailed discussion including role of present applicant. He pointed out that one injured has been permanently rendered bed-ridden because of assault. That applicant is shown to be history-sheeter. According to him, there is no change in circumstance and roles of Jagannath and present applicant are distinct and as such it is not open to press ground of parity. For all above reasons , he prays to dismiss the application.

5. Learned Counsel for informant also strongly objected application pointing out the role of present applicant in FIR. He pointed out that previous attempts went futile as matter has been already dealt on merits and there being no change in circumstance, it is his submission that it is not open to agitate parity. He pointed out that infact informant has also preferred proceedings for enhancement of sentence. That paper book is also ready and main matter i.e. main appeal itself being ready, it can be taken up for hearing. Hence, he prays to reject the application.

6. After considering respective submissions and on going through the papers, it seems that occurrence is of 01-05-2013. On the basis of information of Bhausahab, father of injured Vikram, Police have registered crime bearing no. 67 of 2013 for offence under Sections 307, 325, 143, 147, 148, 149, 109, 341 of the Indian Penal Code and under Section 37(1)(3), 135 of the Bombay Police Act. As regards to present applicant Ramdas is concerned, there appears to be a eye witness account of one PW2 Anna Rambhau Khandekar, who has deposed about present applicant and one Jagannath assaulting Vikram by stick. Evidence of PW4 Ramesh Bansi Dhumal, *prima facie* shows that after rendering injured Vikram immobile, assault was made by Jagannath and present Ramdas. Medical expert PW8 Dr.Chandrashekhar Baburao Pandarfale has deposed about injury to the brain of injured Vikram. There are allegations of assault by means of stick.

7. Record shows that first proceedings was withdrawn but this Court had dealt with Criminal Application No.3170 of 2021 and the same was decided on 18-08-2022 thereby rejecting application of Ramdas i.e. present applicant. However, predecessor of this Court specifically ordered that the application of co-accused Jagannath

Vitthal Kute to proceed further as per procedure. Thereupon, application of Jagannath was heard and decided on 27-06-2023 allowing bail as well as suspending sentence.

8. Now, in the light of above order, again Ramdas has prayed for bail as well as suspension of sentence primarily on the ground of parity. No doubt, law is fairly settled that ground of parity can be pressed into service only when identical roles are attributed to more than one accused. It is also fairly settled that distinct roles of each of the accused are to be assessed even if, ground of parity is pressed into service. Here *prima facie* evidence of PW2 Khandekar and PW4 Dhumal, who are eye witnesses, are in unison deposing about, both Ramdas and Jagannath coming together and using sticks. Hence, considering the identical role, when Jagannath has been given benefit of bail and suspension of sentence, ground of parity is available for present applicant. Hence, he too deserves same treatment as like Jagannath. Resultantly, relief so prayed deserves to be granted. Accordingly, I proceed to pass following order :

ORDER

- (i) The Criminal Application is allowed.

(ii) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the present applicant by learned Additional Sessions Judge, Vijapur, District Aurangabad by judgment and order dated 07-09-2021, passed in Sessions Case No.72 of 2013 to stand suspended and the present applicant be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- (Rupees Fifteen thousand) with one surety in the like amount.

(iii) The applicant shall mark his presence at the concerned Police Station on first Monday of every month till decision of the appeal.

(ABHAY S. WAGHWASE)
JUDGE