



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

**909 CRIMINAL APPLICATION NO. 1164 OF 2024
IN CRIMINAL APPEAL NO. 88 OF 2024**

- 1] Vaibhav s/o Hiranman Shelar,
Age : 25 years, Occu. Business,
R/o. Kakade Palace infront Barate Chal,
Karvenagar, Pune.
- 2] Ninat s/o Kisanrao Mahadik,
Age : 23 years, Occu. Business,
R/o. Kakade Palace infront Barate Chal,
Karvenagar, Pune.

...Applicants

Versus

The State of Maharashtra

...Respondent

...
Mr. Dhanraj Ingole h/f Mr. Nilesh S. Ghanekar - Advocate for Applicant
Mrs. V. S. Chaudhari - APP for Respondent/State
...

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

DATED : 05TH APRIL, 2024

PER COURT : -

1. Heard learned advocate for the Applicants/Appellants and the learned Assistant Public Prosecutor for the State.

2. This is the Application for suspension of substantive sentence imposed upon the Applicants by the learned Additional Sessions Judge, Omerga, Dist. Osmanabad, vide Judgment and Order

dated 30.11.2023 in Sessions Case No. 04 of 2021, for the offences punishable under Sections 302, 120(B), 324, 323, 143, 147, 148, 188, 506 read with Section 149 of the Indian Penal Code (IPC) and Section 269 IPC read with Section 19 of the Disaster Management Act, 2005.

3. The Applicants are seeking suspension of their sentence and bail on the ground of parity. It is submitted by the learned advocate for the Applicants that the two co-convicts and the Applicants were the unknown persons. He submits that the said two co-convicts have been enlarged on bail by suspending their sentence vide order dated 01st March, 2024 passed by this Court in Criminal Application No. 407 of 2024. He submits that the ground of parity is available to the Applicants.

4. The Application is opposed by the learned Assistant Public Prosecutor. She submits that the ground of parity is not available to the Applicants as the vehicle used in the Crime has been discovered and seized at the instance of Applicant No. 2. She further submits that the Applicant No. 2 has been identified in the Court by specific role. She submits that the Application be rejected.

5. It is not in dispute that this Court, after considering the evidence on record, suspended the sentence of the co-convicts in Criminal Application No. 407 of 2024 vide order 01st March, 2024. The

role attributed to the unknown assailants is assault by Bamboo stick. It is also not disputed that the Test Identification Parade (TIP) was conducted in utter disregard of the guidelines after a period of two months of apprehension of the assailants. Except discovery and seizure of the vehicle at the instance of Applicant No. 2, the Applicants stand on the same footing as that of the Applicants whose sentence has been suspended. In our considered view, the ground of parity is available to the present Applicants. The Applicants are behind the bars for more than 3½ years. The Appeal is not likely to be heard in the near future. Hence, we proceed to pass the following order : -

ORDER

- [i] The Application is allowed.
- [ii] During pendency of the Appeal, the substantive sentence of imprisonment imposed against the Applicants by learned Additional Sessions Judge, Omerga, Dist. Osmanabad, vide judgment and order dated 30.11.2023 in Sessions Case No. 04 of 2021, to stand suspended. The Applicants be released on bail on executing PR. Bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.
- [iii] Application is, accordingly, disposed of.

[NEERAJ P DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE