



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1365 OF 2024  
IN CRIMINAL APPEAL NO. 2 OF 2022

Atmaram Pralhad Bhawar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....  
Mr. V.R. Dhorde, Advocate for applicant  
Ms. U.S. Bhosle, A.P.P. for respondent - State  
....

CORAM : R.G. AVACHAT AND  
NEERAJ P. DHOTE, JJ.  
DATE : 27<sup>th</sup> NOVEMBER, 2024

PER COURT :

1. This is an application for suspension of sentence imposed by learned Additional Sessions Judge, Hingoli ('trial Court') in Sessions Case, No. 27 of 2016 by judgment and order dated 29<sup>th</sup> November, 2021.

2. The case of the prosecution in brief is that there was dispute over an agricultural land between the deceased and his family on one side and the accused / convicts on the other. On 22<sup>nd</sup> January, 2016 when deceased - Ambadas and Uddhav and injured – Sanjay were ploughing their field, the accused / convicts came there and objected their act of ploughing the field. The accused / convicts were armed with deadly weapons such as sword, axe and sticks. Deceased - Ambadas and Uddhav were assaulted by the accused /

convicts. PW 3 – Sanjay was also assaulted. The matter was reported to the concerned police station and crime came to be lodged for the offences punishable under Sections 147, 148, 302, 307, 447 read with Section 149 of the Indian Penal Code ('I.P.C.') and under Section 5(1)(c) read with Section 27(1) of the Arms Act. Learned trial Court, after appreciating the evidence in the case and considering the testimony of the injured witnesses, passed the impugned judgment and order.

3. It is submitted by learned counsel for the applicant that though the testimony of PW 3 – Sanjay, who was examined as an eye witness to the incident, has attributed the role of assault by the applicant on him, there is material omission in respect of the word, 'head' in his statement. He submits that the medical evidence do not corroborate the testimony of PW 3 – Sanjay. He submits that though the other eye witnesses i.e. PW 1 - Ayodhya and PW 2 - Dwarka deposed presence of the applicant on the spot with sword, there are improvements in respect of description of weapons from their statements. He submits that the learned trial Court has discarded the discovery of sword at the instance of the applicant. He further submits that the C.A. reports do not show the blood stains on the clothes of the applicant and on the sword. He submits that the applicant is behind the bars from January 2016 and the appeal would not be heard in near future, and therefore, he may be granted bail by suspending his sentence.

4. The application is opposed by learned A.P.P. She submits that the case of prosecution is based on testimony of the injured eye witnesses. The omission and improvement pointed out by learned counsel for the applicant are not so material. There were in all ten assaulters / accused and it is not expected that each eye witness will depose with arithmetical consistency. She submits that the medical evidence corroborates the testimony of the eye witnesses. She submits that there are two deaths and one injured witness. She submits that the appeal may be heard finally and the application be rejected.

5. Learned counsel appearing for Respondent No.2 - informant supports the argument made by learned A.P.P.

6. We have gone through the evidence as pointed out by learned counsel for the applicant. There is no dispute that testimony of the eye witnesses in presence of the applicant is clearly made out. The evidence shows that the assault attributed by the applicant is by use of sword, moreover, presence of the applicant is not disputed. Though there is improvement in the testimony of PW 3 – Sanjay in respect of the word, ‘head’, there are two injuries on the head of this witness i.e. PW 3 – Sanjay, one on occipital region and one on frontal region of head. The crime is registered with the aid of Section 149 of I.P.C. Needless to state that there

are number of assaulters and number of eye witnesses, certain inconsistencies are but natural. The discovery and C.A. reports are not discarded by the trial Court, in view of the evidence of the injured eye witness and two deaths. In our considered view, it is not a fit case for suspension of sentence.

7. We had offered learned counsel for the applicant for final hearing of the appeal since the case is of 2016 and this Court is regularly hearing the jail appeals and particularly the old cases. He took instructions from the applicant, who submitted that the application be decided. In view of above, since the Court was ready to take up the appeal for final hearing right not, due to the instructions of the applicant we have heard the application and in view of above observations, we are not inclined to allow the application. Thus, criminal application is rejected.

**( NEERAJ P. DHOTE, J. )**

**( R.G. AVACHAT, J. )**

SSD