



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1435 OF 2024
IN
CRIMINAL APPEAL NO. 310 OF 2024
WITH
CRIMINAL APPLICATION NO. 1849 OF 2024
IN CRIMINAL APPLICATION NO. 1435 OF 2024
IN CRIMINAL APPEAL NO. 310 OF 2024

- 1] Momin Wahab Nawab,
Age-40 years, Occupation- Labour,
- 2] Momin Mosin Nawab,
Age-28 years, Occupation- Labour,
- 3] Momin Wasim @ Haji Nawab,
Age-26 years, Occupation- Labour,
- 4] Shahnaj Begum Nawab Momin,
Age-65 years, Occupation- Labour,

All R/o. Khwajanagar, Peth Beed,
Taluka and District Beed.

... Applicants
[Original Accused]

Versus

The State of Maharashtra

... Respondent

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Ms. Pooja Ingle, Advocate h/f Mr. S. J. Salunke, Advocate for the
Applicant.

Mr. N. D. Batule, APP for the Respondent-State.

Mr. S. B. Solanke, Advocate for the Applicant in CriAppln/1849/2024.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 02.05.2024

Pronounced on : 08.05.2024

ORDER :

1. Criminal Application No. 1849 of 2024 filed by the original informant, thereby seeking leave to assist APP during hearing of the application for suspension of sentence is allowed. The informant is allowed to assist APP.
2. Criminal Application No. 1435 of 2024 is for suspension of sentence and grant of bail on account of conviction recorded by learned Additional Sessions Judge, Beed in Sessions Case No. 118 of 2022.
3. Learned counsel for the applicants submitted that applicants were tried for the offences punishable under Sections 307, 326, 325, 504 r/w 34 of the Indian Penal Code [IPC], however, they are held guilty only for offence under Sections 326, 324 r/w 34 of IPC and are sentenced to suffer three years imprisonment. The incident took place due to some previous quarrel. It is pointed out that during trial, applicants were on bail. They have a good case on merits in appeal. However, as appeal would take long time to be heard and decided, it is prayed that relief of suspension of sentence and bail be granted.

4. Learned APP as well as learned counsel for the informant both opposed pointing out that charge was for offence under Sections 307, 326, 325, 504 r/w 34 of IPC. That, evidence of PW2 informant (victim) is categorical about role attributed to the applicants. That, offence under Section 326 IPC is proved. Victim's tooth got dislodged in the fight and therefore, both of them opposed the application and relief.

5. After considering the submissions of both sides and on going through the papers, it seems that Peth Beed Police Station registered crime bearing Crime No. 186 of 2021 for offence punishable under Sections 307, 326, 325, 504 r/w 34 of IPC. All four applicants were tried by learned Additional Sessions Judge and during trial, prosecution examined as many as 7 witnesses. PW2 seems to be the injured witness. His evidence is at Exhibit 25. It seems that there was some incident earlier to the incident in question, of which N.C. was lodged and in that background, there are allegations that, accused came to the house of informant, abused him, dragged him out of the house by catching hold of his throat. There are allegations that accused no.4 Shahanaj gave blow with *darati* (a curved blade used to cut vegetable) and when informant tried to ward it off, he suffered blow on the tooth and one tooth came off.

6. Medical expert is also examined as PW6. Apart from abrasions and contusion, there is said to be an incised wound on right eyebrow, coupled with incisor tooth coming off and doctor seems to have certified injuries to be grievous in nature.

7. On appreciation, learned trial Judge has held applicants guilty of offence under Sections 326 and 324 r/w 34 of IPC, however, they are acquitted of the offence under Sections 307, 325, 504 of IPC.

8. Taking such material into consideration, the fact that there was previous quarrel and dispute and the quantum of sentence, relief as prayed deserves to be granted. Hence, following order is passed.

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicants 1] Momin Wahab Nawab, 2] Momin Mosin Nawab, 3] Momin Wasim @ Haji Nawab and, 4] Shahnaj Begum Nawab Momin in Sessions Case No. 118 of 2022 by the Additional Sessions Judge, Beed on 06.03.2024 stands suspended till the final hearing and disposal of Criminal Appeal No. 310 of 2024.

- III. The applicants be released on P.R. Bond of Rs.10,000/- (Rupees Ten 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 they tender 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 bail granted to the applicants.
- VII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]