



1-Cr.Appln Nos.1438.2024 and ors.odt

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

**CRIMINAL APPLICATION NO.1438 OF 2024
IN
CRIMINAL APPEAL NO.313 OF 2024**

Mujmil Gousoddin Mugale ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.U.B.Deshmukh, Advocate for applicant
Mr.B.B.Bhise, APP for respondent

**AND
CRIMINAL APPLICATION NO.1535 OF 2024
IN
CRIMINAL APPEAL NO.349 OF 2024**

1. Abu Talib Mohammad Fakir (Makandar),
2. Riyaz Abu Talib Fakir (Makandar),
3. Fayaj Abu Talib Fakir (Makandar),
4. Jakir Manna Shaikh ..Applicants
Vs.
The State of Maharashtra ..Respondent

Mr.N.S.Ghanekar, Advocate for applicants
Mr.B.B.Bhise, APP for respondent

**AND
CRIMINAL APPLICATION NO.1536 OF 2024
IN
CRIMINAL APPEAL NO.350 OF 2024**

Taufik Mohmmad Kazi ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.S.S.Gangakhedkar, Advocate for applicant
Mr.B.B.Bhise, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : APRIL 29, 2024

ORDER :-

These applications have been filed for suspension of substantive sentence of imprisonment imposed against the applicants/appellants, vide common judgment and order dated 06.03.2024, passed by learned Addl. Sessions Judge, Omerga, Dist. Osmanabad, in Sessions Case Nos.15/2021 and 16/2023, for the offences punishable under Sections 302, 143, 147, 148, 323, 504 read with Section 149 of Indian Penal Code. The applicant/accused no.6 - Taufik Mohmmad Kazi was tried separately in Sessions Case No.16 of 2023, which is decided by said common judgment.

2. The case of the prosecution is that on 08.08.2020, quarrel had taken place between the applicants - Fayaj and Riyaz on one hand and Tanvir, relative of deceased, on the other. The son of deceased, Ashpak (PW 8) intervened in the said quarrel. Applicant - Fayaj slapped him and applicant - Riyaz abused him and his mother. The deceased - Pasha Patel was not at home. When the deceased came home, his wife informed him about the said incident. The deceased along with three others went to the house of applicant - Abu Talib to question about the said incident. A quarrel took place

between the deceased and the applicants. The applicant – Riyaz assaulted the deceased on his head with a wooden plank. The other accused applicants assaulted the deceased with fists and kicks. Due to the injury suffered by the deceased, he was taken to the hospital. He succumbed to the injury suffered on his head. On conclusion of the trial, the applicants came to be convicted.

3. Learned counsel for the applicants submit that the deceased had come to the house of applicant no.1 along with three others. They submit that the incident is the result of quarrel between both sides. There was no intention to kill and at the most, the offence would fall under Section 304, Part I or Part II of Indian Penal Code. The applicants, except Riyaz and Taufik, were on bail during trial. Learned counsel submit that the applications may be allowed.

4. Learned APP for respondent-State submits that the evidence on record show that the applicants were present on the spot. There was unlawful assembly. He submits that wooden plank was used in the assault on the deceased. He submits that the applicants had intention to eliminate the deceased. He submits that the applications may be rejected.

5. The evidence on record would show that the applicant – Riyaz assaulted the deceased on his head by a wooden plank. The

other applicants gave fist and kick blows. The cause of death is head injury. There is no dispute that the single blow on the head of deceased was given by applicant – Riyaz. Whether the said act would attract offence under Section 302 of I.P.C. or Section 304, Part I or Part II of I.P.C., would be ascertained at the time of appreciation of evidence.

6. The applicant – Riyaz is behind the bars for about 3 years and 10 months. The applicant – Taufik was in jail for 8-10 months. The other applicants were on bail during trial. There is no possibility that the appeals may be heard in the near future.

7. In view of the above, we proceed to pass the following order:-

(i) All the applications are allowed.

(ii) During pendency of the appeals, the substantive sentence of imprisonment imposed against the applicants/appellants by learned Addl. Sessions Judge, Omerga, Dist. Osmanabad, vide judgment and order dated 06.03.2024, to stand suspended.

(iii) The applicants/appellants namely, Mujmil Gousoddin Mugale, Abu Talib Mohammad Fakir (Makandar), Fayaj Abu Talib Fakir

(Makandar), Jakir Manna Shaikh and Taufik Mohmmad Kazi be released on bail, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

(iv) The applicant/appellant namely, Riyaz Abu Talib Fakir (Makandar) be released on bail, on executing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one or two sureties in the like amount.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP