



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

**CRIMINAL APPLICATION NO.1758 OF 2024 IN
CRIMINAL APPEAL NO.404 OF 2024**

1. Hanifa Shakil Shaikh.
 2. Mahera Arshad Shaikh
- ... APPLICANTS**

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. Satej S. Jadhav, Advocate for applicants
Mr. S.D. Ghayal, A.P.P. for respondent
.....

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

DATE : 6th MAY, 2024

ORDER :

This is an application for suspension of sentence awarded by the learned Additional Sessions Judge, Majalgaon, District Beed in Sessions Case No.21/2022 vide judgment and order dated 8/4/2024, convicting the applicants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing to suffer imprisonment for life and to pay fine of Rs.5000/- each, in default to suffer R.I.

for three months.

2. The case of the prosecution in nutshell is that, deceased was the brother of accused No.1 Arshad Shaikh. On the fateful day, there was quarrel between accused No.1 and wife of the deceased. The deceased came and intervened. The quarrel took place between the accused No.1 and the deceased. The accused No.1 asked his wife, who is accused No.3 (applicant No.2 herein) to bring knife. Accordingly, she i.e. the applicant No.2 went to their house and brought knife and handed it over to the accused No.1. The accused no.2 (applicant No.1 herein), who is the mother of accused No.1 and deceased, caught hold the deceased, and the accused No.1 inflicted injuries on the deceased with the said knife. The deceased succumbed to the injuries in the hospital. On lodging of the report, the crime came to be registered against the applicants and accused No.1.

3. It is submitted by the learned counsel for the applicants/ appellants that, both the applicants herein are women. They never knew that the accused No.1 would assault his real brother with the knife. He submits that, the intention and knowledge required to attract the offence punishable under Section 302 of the Indian Penal Code cannot

be attributed to both these applicants. He submits that, the applicant No.1 is senior citizen, aged 64 years old. The applicant No.2 is 24 years of age, having a one and half year old child. He submits that, since the appeal would take its own time, they be granted bail by suspending the sentence.

4. The application is vehemently opposed by learned A.P.P. He submits that, the case is based on the testimony of eye witnesses and positive role of assault is attributed to the applicant No.1. He submits that, the applicants also aided in commission of the said crime. He submits that, the evidence on record show that, there are no fair chances of acquittal in the appeal. He submits that, the application be rejected.

5. Admittedly, no role of assault is attributed to either of the applicants. The role attributed to applicant No.1 is that she caught hold her deceased son and applicant No.2 brought the knife as per the say of accused No.1. Both the applicants are women. They were on bail during trial. The applicant No.1 is senior citizen and applicant No.2 is having a small child. There is no possibility that the appeal would be heard in near future. Under such peculiar circumstances of the case, the following order is passed.

ORDER

(i) The Criminal Application is allowed.

(ii) Pending the appeal, the substantive sentence of imprisonment imposed upon the present applicants by the learned Additional Sessions Judge, Majalgaon, District Beed in Sessions Case No.21/2022 vide judgment and order dated 8/4/2024 to stand suspended and the applicants be released on bail on their executing P.R. bonds in the sum of Rs.15,000/- (Rupees fifteen thousand) each with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-