



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

**CRIMINAL APPLICATION NO.1768 OF 2024
IN
CRIMINAL APPEAL NO.20 OF 2021**

1.	Krushna Ashok Korade	
2.	Somnath Bhanudas More	..Applicants
	Vs.	
	The State of Maharashtra	..Respondent

Mr.Abhay Ostwal, Advocate h/f. Mr.Tushar Shinde, Advocate for
applicants
Mrs.S.N.Deshmukh, APP for State

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : MAY 10, 2024

ORDER :-

This application has been filed for suspension of substantive sentence awarded by learned Addl. Sessions Judge, Ahmednagar, vide judgment and order dated 11.11.2020 in Sessions Case No.411 of 2016, thereby convicting them for the offences punishable under Section 302 read with Section 120-B of the Indian Penal Code [for short 'IPC'] and sentencing to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, R.I. for six months under section 302 of IPC; and to suffer R.I. for seven years and pay fine of Rs.7000/-, in default, R.I. for three months under Section 120-B of IPC.

2. It is the Prosecution case that on 13.09.2016, the informant - witness and deceased were travelling on the motorcycle. When they reached at Imampur Ghat near Hanuman Hotel on Nagar - Aurangabad Highway, the informant - witness heard shouts of firearm and when he turned back, he saw that the deceased, who was the pillion rider, had fallen down. The assailants were three (3) in number and on motorcycle. The injured succumbed to the injuries. The FIR was lodged and the applicant along with others came to be arrested. The learned trial Court convicted all the accused persons.

3. Learned counsel for the applicants submits that there is nothing in the evidence to show that the applicants had played different or greater role than the other convict who has been granted bail. He submits that on the ground of parity, the applicants herein may be granted bail by suspending the sentence.

4. The application has been opposed by learned APP. She submits that the applicants were identified in test-identification parade by PW 19 - Dipali (sister of deceased). She submits that there is recovery of fire-arm at the instance of the applicants. She, therefore, submits that the application may be rejected.

5. Perused the order dated 14.02.2024 in Criminal Application No.220 of 2024 passed by this court. Relevant portion thereof is reproduced as under:-

4. What is not in dispute, is that the co-accused to whom the role of conspiracy has been attributed is granted bail. It is further not disputed and what is clear from the evidence on record that, the identity of the Applicant as the assailant has not been established, as the assailants had covered their faces. The only evidence against the Applicant is discovery / recovery of the country made pistol under Section 27 of Indian Evidence Act and forensic evidence to show that the bullet which was fired was from the firearm seized at the instance of the Applicant. However, the question remains as to whether it was the Applicant who had fired the bullets from the said pistol. Prima facie, there appears no evidence to that effect. The other piece of evidence brought on record by the Prosecution is CCTV Footages which are of the place at some distance from the spot of incident wherein the assailants are identified on the basis of colour of clothes. The Applicant is behind the bars since more than 7½ years. There is no possibility that the Appeal would come up for final hearing in near future.

6. The applicants in the present case have been attributed with similar role. Thus, the applicants are entitled for suspension of sentence on the ground of parity. We, therefore, proceed to pass the following order:-

O R D E R

- (I) Criminal Application is allowed.
- (II) The substantive sentence imposed by the learned Additional Sessions Judge, Ahmednagar vide Judgment and Order dated 11.11.2020 on the applicants/ appellants is suspended during the pendency of Appeal.

(III) The applicants/appellants be released on bail on furnishing P.R. Bond of Rs.15000/- [Rupees Fifteen Thousand Only] each with one surety each in the like amount .

(IV) Bail before the Trial Court

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP