



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1826 OF 2024
IN
CRIMINAL APPEAL NO. 530 OF 2017

Ashok Devidas Pawar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. M.V. Salunke, Advocate for applicant

Ms. S.N. Deshmukh, A.P.P. for respondent - State

....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 08th MAY, 2024

PER COURT :

1. This is an application for suspension of substantive sentence imposed by Additional Sessions Judge, Beed in Sessions Case No. 173 of 2014 vide judgment and order dated 15th September, 2017 thereby convicting the applicant for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Crime No. 88 of 2014 came to be registered with Pimpalner Police Station, Dist. Beed on the report lodged by P.W.1 – Sushil Shinde. His relevant evidence in the trial is as follows :-

“On 9.8.2014, we had gone to Shirdi. Alongwith me Jagannath Mahadeo Pawar, Trimbak Uddhav Pawar, Appasaheb Karbhari

Pawar, Santosh Dnyanoba Pawar and Deepak Bharat Kambilkar had gone to Shirdi by Ape Rickshaw. I was driving said Ape Rickshaw. On 10.8.2014, we had returned from Shirdi. We had reached Dhekanmoha at about 10.00 to 10.30p.m. From there, we were proceeding towards Kalegaon. While we were going towards Kalegaon near Thapade Vasti we saw that a motorcycle was lying on the wing of the road towards western side. The motorcycle was bearing No. MH-23/EQ-2337 and of red colour glamour make. The said motorcycle was of my paternal uncle Madhukar Shinde. Therefore, I had stopped the Ape Rickshaw. When I went near motorcycle I heard words "Pappu Pal re Wachav" from western side. There was a field in which cotton crop was cultivated on the western side of the road. I had rushed towards the said field. I went inside the field upto a distance of 3,4 Kasras (a distance measured in the villages 10 to 12 feet per Kasra). Now the witness again says that he went in to the field upto 8 to 10 Kasras. I saw that my paternal uncle was lying with injuries on his body. I took him upto the Ape Rickshaw. There was a piercing injury on his chest and I asked him how that had happened. He had said to me that Ashok Devidas Pawar, Devidas Sitaram Pawar and Anil Devidas Pawar had assaulted him."

3. It is submitted by learned counsel for the applicant that the co-convicts are released on bail by this Court by suspending their substantive sentence. He submits that, the ground of parity is available for the applicant. The applicant is behind the bars for near about ten years.

4. The application is opposed by learned A.P.P. She submits that the case is based on oral dying declaration given to the nephew of the deceased, who is the informant and examined as P.W.1. She submits that the weapon used in the assault i.e. the iron *baccha* (medium size knife), is seized at the instance of the applicant. She contends that the application may be rejected.

5. There is no dispute that two accused, who were named in the dying declaration, have been granted bail by suspending their substantive sentence by this Court. Except recovery of the said medium size knife, the evidence against all the convicts is similar. In our view, ground of parity would be available to the applicant. Moreover, he is behind the bars for more than nine years i.e. close to ten years. There is no likelihood that the appeal would be heard in the near future. Hence, we proceed to pass the following order :-

ORDER

- (I) Criminal application is allowed.
- (II) Pending the appeal, the substantive sentence of imprisonment imposed on the applicant by Additional Sessions Judge, Beed vide judgment and order dated 15th September, 2017 in Sessions Case No. 173 of 2014, stands suspended.
- (III) The applicant be released on his executing P.R. bonds in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD