



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL APPLICATION NO. 3284 OF 2024
IN APEAL/485/2024

UMESH KADUBA GAWALI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Appellant : Mr. Ghanekar Nilesh S.
APP for Respondents/State : Mr. K.K.Naik
...

CORAM : KISHORE C. SANT, J.
DATE : 28th AUGUST, 2024.

PER COURT :

1. Heard the parties.
2. This application is for suspension of substantive sentence imposed by the learned Additional Sessions Judge, Vaijapur, District Aurangabad in Session Case No. 36 of 2017, for the offences punishable under Sections 304 (II) read with 34 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 7 years and to fine of rs. 2,000/- each, in default to suffer S.I. for three months.
3. The learned Advocate for the appellant argued that the appellants were on bail during the trial and they have

undergone 4 months and 7 days imprisonment during the trial. Thereafter, from the date of judgment i.e. from 21.02.2024, they are again in the custody. Thus, they have suffered more than 10 months imprisonment as of now. There is no direct evidence to connect the applicants to the incident, except that these applicants are identified by the deceased. There is no other material to connect them with the alleged incident. Even the evidence of PW-3 did not specify the role of any of these applicants. As such there is no recovery of weapon from them. He further submits that infact from the evidence of PW-3 it is clear that applicant No. 3 was present in the hospital, which clearly shows that it was these applicants who have infact brought the deceased to the hospital. It is further clear that there was a mob gathered and that mob was beating the deceased. There is no one made accused from the above mob, who were gathered except these three applicants, against whom the offence came to be registered.

4. If the applicants alleged to have beaten and assaulted the deceased, they would certainly not have brought the deceased to hospital. Bringing the deceased to the hospital by the these applicants itself shows that they are innocent. In

view of the same, the learned Advocate for the applicants prays for suspension of substantive sentence.

5. The applicants have already deposited the fine amount.

6. Learned APP vehemently opposed the application stating that the offences are serious one. One person has lost his life in the incident. The deceased has identified all these persons/applicants and there is material against them to connect them to the alleged incident. He thus, opposed the application.

7. Considering that there is a ground to believe that these applicants are implicated only because they are identified by the deceased in the hospital. Secondly, sentence appears to be of 7 years and the appeal is not likely to be heard in the near future and the fact that the fine amount is already deposited and the applicants were on bail during trial. Hence this Court is inclined to pass following order :

ORDER

- (i) The application stands allowed and disposed off.

(ii) The applicants Umesh s/o Kaduba Gawali, Tarachand s/o Balchand Gawali and Arjun s/o Bhavrao Gawali are released on bail. The substantive sentence imposed on the applicants by the learned Additional Sessions Judge, Vaijapur, in Session Case No. 36 of 2017 for the offences punishable under Sections 304 (II) read with 34 of the Indian Penal Code stand suspended.

(iii) The applicants shall be released on bail on furnishing their PR bonds in the sum of Rs. 15,000/- (Rs. Fifteen Thousand Only) each & on furnishing a solvent surety in the like amount on following condition :

(a) The applicants shall report the concerned Police Station on first Sunday of every month till disposal of appeal.

(KISHORE C. SANT)
JUDGE

mahajansb/