



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3720 OF 2024
IN CRIMINAL APPEAL NO. 799 OF 2024

Dipak @ Lola Tarasingh Thakur

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

AND CRIMINAL APPLICATION NO. 3337 OF 2024
IN CRIMINAL APPEAL NO. 765 OF 2024

Girish @ Tholya Gangaram Kotewad

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. R.P. Patwardhan, Advocate for applicant in APPLN/3720/2024

Mr. G.V. Wani, Advocate for applicant in APPLN/3337/2024 (appointed through Legal Aid)

Ms. U.S. Bhosle, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 30th AUGUST, 2024

PER COURT :

1. These are the applications for suspension of sentence imposed by learned Additional Sessions Judge-1, Nanded in Sessions Case No.55 of 2017 vide judgment and order dated 30th March, 2024, convicting the applicants for the offences punishable under Sections 307, 332, 325, 506 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life with fine.

2. Heard learned counsel for the applicants and learned A.P.P. for the respondent – State. Perused the evidence on record.

3. It is the case of prosecution that the victim (P.W.1), who is a Policeman attached to Shivajinagar Police Station, Nanded, was returning home from his duty. At that time, he noticed the applicants who were absconding in another crime registered for the offence punishable under Section 354 of the Indian Penal Code, registered with Shivajinagar Police Station, Nanded. He stopped and caught hold of the applicants and one other. The applicants and co-convict fled away. He followed them. At some distance, the applicants and co-convict assaulted him with deadly weapon such as dagger. He suffered injuries for which he was hospitalised. On his report, the crime came to be registered against the applicants and co-convict.

4. Learned trial Court, after the trial, passed the aforesaid judgment and order.

5. It is submitted by learned counsel for the applicants that punishment for life imprisonment is disproportionate to the offence for which present applicants have been convicted. They submitted that the co-convict, who was named in the F.I.R. and who played some role which is attributed to the applicants, has been granted bail by this Court in Criminal Application

No. 1756 of 2024 vide order dated 08th August, 2024. They submit that the applicants are behind the bars for more than four years. They submit that the applicants were not named in the F.I.R. and no test identification parade was conducted. Therefore, identity of the applicants is in the shadow of doubt. They submit that there is variance in the testimony of doctor, who treated the injured. They submit that the evidence on record shows that on the very next date the injured was discharged, as he was normal. They submit that the applications be allowed.

6. It is submitted by learned A.P.P. that, the medical evidence on record goes to show that the victim suffered grievous injuries. She submits that, the weapon used was dagger and the applicants had no regard that the victim was a policeman. She submits that, from the medical evidence on record, it is clear that the applicants were having intention to commit murder of the injured. She submits that, the applicants are having criminal antecedents and if they are granted bail, they will again resort to criminal activities. She submits that, the application be rejected.

7. We have considered the submissions raised by learned counsel for the applicants and learned A.P.P. We have carefully scrutinised the evidence on record. There is no dispute that the victim – injured is a policeman. The evidence on record goes to show that the prosecution has examined P.W.7 -

Dr. Sandeep Utkure, who was the R.M.O. at Lotus Hospital, which was a private hospital. In his evidence, he deposed the nature of the injuries as C.L.W., incised, grievous wounds. However, the evidence of P.W.8 - Dr. Ram Chidrawar of the same hospital gave the injury in the nature of C.L.W. This clearly shows variance in the opinion of two doctors of the very same hospital. Their evidence nowhere shows that the injuries suffered by the victim were sufficient in ordinary course of nature to cause death, had they not been treated in time. Admittedly, there are no medical papers from the Government Hospital. The evidence of P.W.8 - Dr. Ram Chidrawar shows that, from 04th April, 2017 till his discharge, the condition of the injured was normal. It is also evident that the victim-injured was discharged from the hospital after 6 days. It is nobody's case that, the injured was still required to take treatment for his injuries. Admittedly, the victim has joined his daily pursuits after his discharge. Admittedly, the applicants were unknown to the injured witness. They were not named in the F.I.R., unlike the co-convict. No test identification parade was held.

8. Admittedly, the offence under Section 307 of the Indian Penal Code though provides for punishment which may extend to life imprisonment, it also provides for sentence which may extend to 10 years imprisonment.

9. From the above discussed medical evidence, in our prima facie view, punishment of imprisonment for life appears to be disproportionate to the crime. The applicants are behind the bars for more than 4 years. There is no possibility that the appeal would come up for final hearing in the near future. As regards the criminal antecedents are concerned, the law will take its own course. Undoubtedly, the co-convict, who was named in the F.I.R., has been granted bail by this Court. In this view of the matter, we proceed to pass the following order :-

ORDER

- (i) Both the criminal applications are allowed.
- (ii) Pending the appeals, the execution of the substantive sentence imposed by learned Additional Sessions Judge-1, Nanded in Sessions Case No.55 of 2017 vide judgment and order dated 30/3/2024 to stand suspended and the applicants be released on bail on their executing P.R. bond in the sum of Rs.30,000/- (Rupees thirty thousand) each with one or two sureties each in the like amount.
- (iii) Since Mr. Rohit P. Patwardhan, learned counsel is appointed by this Court, his provisional fee is quantified to Rs.10,000/- (Rupees Ten Thousand), to be paid by Legal Aid.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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