



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3714 OF 2022
IN
CRIMINAL APPEAL NO. 857 OF 2022

Vikram Namdeo Yele

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.J. Salunke, Advocate for applicant
Mr. N.R. Dayma, A.P.P. for respondent - State
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 11th JUNE, 2024

PER COURT :

1. Heard.
2. This is an application for suspension of sentence imposed by learned Additional Sessions Judge, Bhoom in Sessions Case No. 8 of 2019 vide judgment and order dated 08th February, 2022.
3. The case of prosecution, in brief, is that there was dispute between the deceased and the applicant on the point of grazing the cattle. Before the incident in question, a witness – Lahu was assaulted by the applicant and co-accused. When the informant and others rushed to save Lahu, the applicant and co-convicts assaulted deceased – Manoj on 22nd November, 2018. Manoj

succumbed to the injuries suffered in the said assault. The incident took place on a road. Crime vide C.R. No. 217 of 2018 came to be registered with Bhoom Police Station for the offences punishable under Sections 302, 307, 341, 324, 323, 143, 147, 148 and 506 read with Section 149 of the Indian Penal Code.

4. It is submitted by learned counsel for the applicant that all the co-convicts are enlarged on bail by this Court vide order dated 16th March, 2022 passed in Criminal Application Nos.694 and 695 of 2022 and vide order dated 25th March, 2022 passed in Criminal Application No. 947 of 2022. He submits that the applicant is behind the bars for more than five years and considering the evidence on record, the offence is likely to be scaled down. He urged for allowing the application.

5. Learned A.P.P. opposed the application. He submits that vital blow was given by the applicant, and therefore, he could not claim parity. He submits that the applicant also assaulted the eye witness and threatened to eliminate Manoj fifteen days prior to the incident. He further submits that the trial Court has rightly appreciated the evidence on record, and therefore, application may be rejected.

6. There is no dispute that in all seven accused are convicted by the trial Court. It is also not in dispute that all the co-convicts except the

applicant, are enlarged on bail by suspending their sentence by this Court. It would be necessary to reproduce the observations of this Court in order dated 16th March, 2022 passed in Criminal Application Nos. 695 and 694 of 2022, as under :-

“5. Though there are allegations about formation of unlawful assembly, however, it appears that a single blow had been given on the head of deceased Manoj by accused No.7 Vikram. We have carefully gone through the postmortem report. It appears that deceased Manoj had sustained only one injury i.e. in the form of CLW over occipital region with fracture of occipital bone. The cause of death is also ‘shock due to intracranial hemorrhage due to head injury’. Deceased Manoj had not sustained any other injury. So far as the injured eye witnesses are concerned, even though they have sustained injuries, and particularly the injured eye witnesses P.W. Lahu is concerned, though he has sustained fracture injury, however, he has not ascribed any specific role to the present applicants. It is not clear from his evidence as to which of the accused person/s has /have caused injuries to him. It further appears that during the course of quarrel, accused No.7 Vikram had given a blow of axe on the head of deceased Manoj. Though there are allegations that accused No.7 Vikram had given a blow of axe on the leg of P.W. Lahu, however, he has only sustained simple injury on his leg. The applicants before us were on bail during trial. Thus, considering the entire evidence as discussed above, we are inclined to release the applicants on bail by suspending the substantive part of the sentence to their extent.”

7. It is the case of prosecution that the applicant used an axe in the assault. The evidence on record do not show that sharp side of the axe was used in the assault. It is needless to state that when an accused uses a weapon of assault with an intention to eliminate the victim, the sharp side

would be used. Admittedly, the deceased suffered single blow. This evidence on record, prima facie supports the contention of learned counsel for the applicant that there is likelihood that lesser offence would be made out. The applicant is behind the bars for more than five years. As the co-convicts are on bail and the criminal appeal is of the year 2022, there is no possibility that the appeal would be heard finally in near future.

8. In view of above, execution of substantive sentence of imprisonment imposed on the applicant by learned trial Court to stand suspended pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

9. Criminal application stands disposed of.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)