



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4461 OF 2024
IN APPEAL/981/2024

1. Taher Babu Shah
Age: 41 years, Occu.: Labour.
 2. Sajanbee Taher Shah
Age: 36 years, Occu.: Labour,
Both R/o. Bildagaon,
Tq.Phulambri, Dist.Aurangabad.
- ..Applicants.
(Ori. Accused no.1 & 2)

VERSUS

1. The State of Maharashtra
Through Phulambri Police Station,
Tq.Phulambri, Dist.Aurangabad.
 2. Shaker Raju Shah
Age: 20 years, Occu.: Labour,
R/o. Buildagaon, Tq.Phulambri,
Dist.Aurangabad.
- ..Respondents

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Advocate for Applicants : Mr. Gautam J. Pahilwan
APP for Respondent no.1 : Mr.S.M.Ganachari
Advocate for Respondent no.2 : Mr. Saud Ahemad Deshmukh

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 19 NOVEMBER, 2024

ORDER :

1. By way of instant application, prayers are put up for suspension of sentence and grant of bail as a result of conviction

recorded by learned Additional Sessions Judge, Aurangabad dated 17-10-2024 in Sessions Case No.512 of 2022.

2. Learned Counsel for the applicants submitted that both applicants are chargesheeted and tried vide above Sessions case No.512 of 2022. That by judgment and order dated 17-10-2024, conviction has been rendered against which appeal has been preferred in 2024. It is submitted that there are allegations of use of knife as regards applicant no.1 is concerned and mere allegation of slapping against applicant no.2. It is submitted that the incident is due to previous dispute. Learned Counsel submitted that applicant no.(1) is behind bar since 04-08-2022 and applicant no.(2) is behind bars for a total period of 54 days. That applicant no.(1) is behind bars for almost half of the sentence. That sentence awarded is fix term and under such circumstances, as there are no chances of hearing the appeal in near future, learned Counsel prays for relief of suspension of sentence as well as grant of bail.

3. Learned APP for State strongly opposed application on the ground that serious offence is proved to be committed on full-fledge trial. That there are allegation of use of deadly weapon. That

serious offence of attempt to murder is proved and as such according to learned APP, it is not a fit case for grant of relief.

4. Heard both the sides. Perused the papers including evidence of informant injured PW1 Shaker Raju Shah. He has deposed about occurrence taking place on 2-8-2022 at around 6:00 p.m. to 06.30 p.m. wherein he has alleged that while he was in his house, accused persons came, picked up quarrel, abused him and gave him beating initially by kicks and fist blows. Subsequently, present applicant no.1 Taher allegedly came running saying that informant should not be spared and should be done to death and again he went back to house and came back with knife and inflicted blows on left side rib, left abdomen and right side chest part of the informant. PW4 Dr.Angad Nivrutti Ghule, who examined informant and another injured, has deposed that PW1 Shaker suffered multiple stab injuries in his abdomen and said injuries to be possible by sharp weapon and he accordingly issued certificate exh.43. Trial culminated into conviction on appreciation of evidence of almost 10 witnesses. Though sentence awarded by trial Court is for five years, it is for offence under Sections 307 and 326 read with 34 of the IPC. Therefore, considering the above circumstances and backdrop of

actual occurrence, this Court is not in favour of granting relief of suspension of sentence and grant of bail to applicant no.1. However, as regards to applicant no.2 is concerned, *prima facie* there are no allegations of use of any weapon or article. Present applicant no.1 seems to be husband of applicant no.2. Therefore, as she was accompanying accused applicant no.1, she also is named and seems to have involved invoking Sections 307 and 326 read with 34 of the IPC. However, as there is no serious overt act attributed to her and as her appeal is pending, relief of suspension of sentence and grant of bail as against applicant no.2, who seems to be a woman, deserves to be granted. Accordingly, I proceed to pass following order :

ORDER

- (i) Criminal Application No.4461 of 2024 is partly allowed.
- (ii) Application of applicant no.1 is rejected.
- (iii) The sentence imposed on the applicant no.2 - Sajanbee Taher Shah in Session Case No. 512 of 2022 by the learned Additional Sessions Judge, Aurangabad on 17-10-2024 stands suspended till the final hearing and disposal of Criminal Appeal No.981 of 2024.

(iv) The applicant no.2 - Sajanbee Taher Shah be released on P.R. Bond of Rs.10,000/- (Rs.Ten thousand only) with two solvent sureties in the like amount.

(v) The applicant no.2 shall not commit any criminal activity.

(vi) The applicant no.2 shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date she tenders bail papers and thereafter, the trial Judge to fix dates for her subsequent appearances.

(vii) In case of two consecutive defaults on the part of the applicant no. 2 to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant no.2.

(viii) Bail before the trial Court.

(ABHAY S. WAGHWASE)
JUDGE