



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3845 OF 2023
IN
CRIMINAL APPEAL NO. 306 OF 2023

Ganesh s/o Baban Nimse
Age : 32 years, Occu. Agri.,
R/o. Nimse Vasti, Walunj,
Taluka and District Ahmednagar.

... Applicant
[Orig. Accused]

Versus

The State of Maharashtra

... Respondent

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Mr. N. B. Narwade, Advocate for the Applicant.
Mr. S. M. Ganachari, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.01.2024

Pronounced on : 31.01.2024

ORDER :

1. This application for suspension of substantive sentence and grant of bail is filed by applicant-original accused no. 2 in Sessions Case No. 336 of 2016, wherein, vide judgment and order of conviction dated 29.03.2023 passed by learned Additional Sessions Judge, Ahmednagar, the appellant, along with other co-accused persons, stood convicted for offence punishable under Sections 143, 147, 148, 307 r/w 149, 325 r/w 149, 324 r/w 149, 323 r/w 149, 506 r/w 149 of the Indian Penal Code [IPC] and Section 4 r/w 25 of the Arms Act.

2. Submissions are advanced that present applicant had also moved application along with other applicants vide Criminal Application No.1376 of 2023, however at that time relief as regards the present applicant Ganesh was not pressed. Bail of other applicants was granted by this court by order dated 17.04.2023. It is specifically pointed out that while disposing of the bail application, this court had made the following observations in para 7 of the order :

“7. Learned counsel for the applicant - Ganesh did not press his application for the present. It is observed that the court has not heard learned counsel for the applicant - Ganesh, at length, and therefore, has not arrived at any conclusion regarding merits of his case for grant of suspension of substantive sentence. The applicant – Ganesh may revive his prayer after a period of six months.”

That, in view of such liberty, now bail for applicant Ganesh is pressed into service.

3. In support of relief of suspension of sentence and grant of bail, learned counsel for the applicant submitted that apparently the incident in question is fallout of a civil dispute. That, witnesses are interested witnesses. Medical Experts are giving contrary versions

about nature and size of injury. That, as appeal would take long time to be heard and decided, it is prayed that present applicant be set at liberty by allowing the bail application.

4. Learned APP pointed out that charge of attempt to commit murder has been held to be proved after full fledged trial. Role of applicant Ganesh is well defined. He is said to be armed with sword and the same is said to be put to use. Medical experts are corroborating the testimony of eye witness account and so he prays to dismiss the application.

5. In the light of above submissions and on *prima facie* going through the papers, the incident in question seems to have taken place at 8.45 a.m. on 12.10.2015. From the FIR itself it is *prima facie* revealed that accused party and complainant party are at loggerheads on account of common ridge and the incident seems to be a fallout of the same. In the FIR, as many as 9 persons are named. However, except present appellant, other seven have been granted bail by this court and sessions case was abated against one.

6. It seems that on 12.10.2015, accused named in the FIR went towards complainant party getting armed with sword, iron pipe and

rod and the same is said to be put to use by accused persons in assaulting complainant Ashok, his brothers Nilesh and Popat, father Suresh and mother Mandabai. Present applicant/accused Ganesh had given blow of sword on the head of injured Nilesh causing him bleeding injury. Said injured Nilesh is examined in the capacity of PW6. PW7 Dr. Sonar and PW8 Dr. Kohak seem to be the medical witnesses who examined and treated the injured and issued injury certificate. As regards any variance in that testimony or impact of non-examination of the surgeon who conducted surgery on injured Nilesh, it cannot be gone into at this stage. Role attributed to applicant Ganesh is well defined i.e. he gave blow of sword on the head of injured Nilesh. Charge is framed for commission of offence under Section 307 r/w 149 of IPC. True it is that record shows that other co-accused are given benefit of bail by this court by order dated 17.04.2023, however there is specific observation in the said order that, as against those co-accused, simple injuries are attributable. Here it is not so. Here, present applicant Ganesh is reported to be armed with sword and he has put the same to use. Medical expert PW7 deposed about noticing CLW on parietal region. Other medical expert PW8 has deposed that injured Nilesh was operated for internal bleeding in brain. Mere failure to examine surgeon who operated injured Nilesh is not good ground for grant of bail.

7. Therefore, taking into consideration the role attributed to the present applicant, the nature of arm he was equipped with and the site of body where assault was carried out, this court does not deem it fit case for grant of relief as prayed. Hence, I proceed to pass the following order :

ORDER

The application is accordingly rejected.

[ABHAY S. WAGHWASE, J.]

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