



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 3851 OF 2023
IN APPEAL/986/2023**

1. Madhukar s/o Namdeo Dethe
Age: 41 years, Occu.: Private,
R/o. Village Ambegaon, Ta.Jafrabad,
Dist.Jalna.
2. Ashok s/o. Mohan Hivale
Age: 59 years, Occu. and
R/o. As above.
3. Dnyandeo s/o Mohan Hivale
Age: 61 years, Occu. and
R/o. As above.
4. Sheshrao s/o Mohan Hivale
Age: 52 years, Occu. And
R/o. As above.

..Applicants
(Original Accused Nos.1 to 4)

Versus

1. The State of Maharashtra
through the Officer Incharge,
Sadar Bazar Police Station, Jalna,
Taluka and District Jalna.
2. Krushna s/o Vishwasrao Hivale
Age: 37 years, Occu.: Agriculture,
R/o. Village Ambegaon, Taluka
Jafrabad, Dist.Jalna.
3. Santosh s/o Gangaram Hivale
Age : 57 years, Occu.: Agriculture,
R/o. Village Dongaon, Taluka
Jafrabad, Dist.Jalna.

..Respondents

(No.1 – Prosecution and Nos.2 and 3 are PW-1 and PW-4/Injured witnesses/ granted compensation)

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Advocate for Applicants : Mr. Rajendraraa S.Deshmukh a/w. Mr.V.A.Chavan i/b. Mr.D.R. Deshmukh

APP for Respondent - State : Mr.N.D.Batule

Advocate for Respondent no.2 : Mr.Ippar Pawan K.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 03 JANUARY, 2024

PRONOUNCED ON : 05 JANUARY, 2024

ORDER :

1. Vide above application, applicants have prayed for suspension of sentence and grant of bail on account of their conviction by learned Additional Sessions Judge, Jalna in Sessions Case No.68 of 2020 for offence under Sections 307, 341 read with 34 of the Indian Penal Code (IPC).

2. In support of relief, learned Senior Counsel pointed out that in all six accused were indicted for above charge. He would point out that only accused nos.1 to 4 were held guilty for offence u/s 307, 341 read with 34 of the IPC, whereas accused nos.5 and 6 were acquitted. He pointed out that during trial, applicants were on bail. As regards to merits are concerned, he would point out that there is

long standing dispute between complainant party and accused party and there are cross cases both on civil side as well as criminal side. Regarding the present case, it is pointed out that there are allegations that almost 10 persons allegedly followed and mounted assault. However, he pointed out that specific roles are not defined. Complaint is also regarding involvement of three other unknown persons. There is no prompt FIR. He apprised this Court about status of the prosecution witnesses and would submit that they all are giving stereotype evidence. That there are allegations of use of iron rod, but who actually used and where, has not been substantiated. He also took this Court through the medical evidence adduced by PW9 Dr.Adinath Trimbakrao Patil as well as injury certificates. He invited attention of this Court to the MLC Exh.77 and pointed out that there is reference of assault by unknown persons.

Consequently, it is his submission that there is a strong case on merits in appeal but as it would take long time to be heard and decided, he prays for suspension of sentence and grant of bail.

3. Learned APP for the State opposed the application on the ground that offence is serious. That several persons are injured. That there is use of article like iron rods. The same are recovered

and considering the serious nature of the offence, he resisted the application and the relief.

4. Learned Counsel for the victim also opposed application by pointing out that family members of accused party are issuing threats and therefore, NC is lodged. He placed copy of NCR on record. Therefore, according to him, if accused are set at liberty, they are likely to misuse the same. For above reasons, he prays to reject the application.

5. This Court is dealing with provisions under Section 389 of the Cr.P.C., which pertain to suspension of sentence and grant of bail during pendency of appeal. There are certain settled principles, which are to be borne in mind while exercising above powers. Law on this point is enumerated as under :

There are catena of judgments on above point and a few could be named as *Rama Narang v. Ramesh Narang and others*; (1995) 2 SCC 513; *Rajesh Rajan Yadav alias Pappu Yadav v. CBI*; (2007) 1 SCC 70 and *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*; (2008) 5 SCC 230 wherein scope, object and purport of Section 389 of the Cr.P.C. has been distinctly and lucidly discussed.

Very recently, the Hon'ble Apex Court in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary and another***; (2023) LiveLaw SC 389 has elaborately dealt with the precedent on above provision and after dealing with above referred cases and other cases namely, ***Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another***; (2012) 9 SCC 446; ***Bhagwan Rama Shinde Gosai and Others v. State of Gujarat***; (1999) 4 SCC 421; ***State of Haryana v. Hasmat***; [(2004) 6 SCC 175]; ***Vijay Kumar v. Narendra and Others***; [(2002) 9 SCC 364]; ***Atul Tripathi v. State of Uttar Pradesh and Others***; (2014) 9 SCC 177; ***Kishori Lal v. Rupa and Others***; (2004) 7 SCC 638; ***Ramji Prasad v. Rattan Kumar Jaiswal and Another***; (2002) 9 SCC 366; ***Vasant Tukaram Pawar v. State of Maharashtra***; (2005) 5 SCC 281 and ***Gomti v. Thakurdas and Others***; (2007) 11 SCC 160, culled out following propositions in para 33 of the judgment which is as under:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands

of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here and there in the case of the prosecution. Such would not be a correct approach.”

Therefore, the legal proposition that is settled is that though it is a discretionary power, it is expected to be exercised judiciously and in only such cases in which circumstances and reasons exist to grant such relief. Ultimately, it all depends on the facts and circumstances of each case and there is no straight jacket formula or absolute rule for grant or refusal. However, in the case of **Vijay Kumar** (supra) as well as **Atul Tripathi** (supra), it has been held that Court should consider factors like nature of accusation, manner in which the crime is alleged to have been committed, gravity of offence, age, criminal antecedents of the convict, desirability of releasing the accused on bail by suspending the sentence etc.

6. Bearing in mind above legal position and on *prima facie* going through the record and papers, it is seen that there is history of civil dispute and cases seem to have been filed by both sides against each other. Incident in question seems to have taken place on 08-06-2019. Allegations are that when PW1 Krushna Vishwasrao Hivale i.e. informant, his uncle Santosh Hivale and Shivaji Hivale were returning from S.T. Bus stand Jalna, they were given chase by applicant Madhukar Dethe and others in a white Duster vehicle. He also spoke about attempt to give dash by vehicle and when he and others took motorcycle aside, it is alleged that almost 10 people attacked them and beat them by iron rod and wooden sticks. He has named present applicant Madhukar Dethe, Ashok Hivale, Dnyandev Hivale, Sheshrao Hivale, Parmeshwar Hivale, Rameshwar Hivale, Dnyaneshwar Hivale and three unknown persons.

7. Learned trial Court seems to have accepted the prosecution story as proved and held accused nos.1 to 4 i.e. present applicants guilty of charge under Sections 307 and 341 read with 34 of the IPC vide judgment dated 29-09-2023. Aggrieved by the same, appeal seems to have been preferred on 18-10-2023 and present application for suspension of sentence and bail is pressed into service.

8. Taking into consideration the nature of accusation, previous dispute of civil nature, cross cases, nature of articles put to use, number of assailants and the fact that appeal would take a long time for decision, I find it a fit case for grant of relief.

However, considering the long standing enmity and that parties are neighbours to each other, coupled with the aspect of NC filed by complainant dated 2-10-2023 at Tembhurni Police Station, Tq.Jafrabad, Dist.Jalna, stringent conditions are required to be imposed. Accordingly, I proceed to pass following order :

ORDER

- (I) Criminal Application stands allowed.
- (II) The substantive sentence imposed on the applicant nos.(1) Madhukar Namdeo Dethe (2) Ashok Mohan Hivale (3) Dnyandeo Mohan Hivale and (4) Sheshrao Mohan Hivale in Sessions Case No.68 of 2020 by the learned Additional Sessions Judge, Jalna on 29-09-2023 stands suspended till the final hearing and disposal of Criminal Appeal No.986 of 2023.
- (III) The applicants be released on P.R. Bond of Rs.30,000/- (Rs.Thirty thousand only) each with two solvent sureties each in the like amount.
- (IV) The applicants shall not commit any criminal activity.

(V) Applicants shall not enter the vicinity of village Ambegaon, Taluka Jafrabad, Dist.Jalna, without prior permission of this Court, till disposal of the appeal.

(VI) The applicants shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.

(VII) In case of two consecutive defaults on the part of the applicants 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 applicants.

(VIII) Bail before the trial Court.

(ABHAY S. WAGHWASE)
JUDGE