

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

**CRIMINAL APPLICATION NO. 4347 OF 2023
IN
CRIMINAL APPEAL NO. 1143 OF 2023**

1. Nandu Govind Khile,
Age : 48 years, Occupation : Agricultural,
2. Deepak Govind Khile,
Age : 46 years, Occupation : Agricultural,
3. Kautik Chintaman Khile,
Age : 62 years, Occupation : Agricultural,
4. Pravin Amrut Kshirsagar,
Age : 37 years, Occupation : Agricultural,
5. Hilal Narayan More,
Age : 62 years, Occupation : Agricultural,
6. Bhatu Waman Nimbalkar,
Age : 62 years, Occupation : Agricultural,
7. Ramesh Waman Nimbalkar,
Age : 55 years, Occupation : Agricultural,

All R/o. Anakwadi,
Tq. & District : Dhule.

....Applicants
(Orig. Accused Nos. 1 to 7)

Versus
The State of Maharashtra

...Respondent

.....
Mr. Joydeep Chatterji – Advocate for the Applicants
Mr. S. D. Ghayal – Addl. P. P. for respondent/State
Mr. Mukul S. Kulkarni – Advocate to assist P.P.

.....

**AND
CRIMINAL APPLICATION NO. 4358 OF 2023
IN
CRIMINAL APPEAL NO. 1145 OF 2023**

1. Sagar s/o Karbhari Khile,
Age : 23 years, Occupation : Agriculturist,
R/o. Anakwadi, Tq. Dist. Dhule.
2. Ganesh s/o Mahadu More,
Age : 23 years, Occ : Agriculturist,
R/o. Anakwadi, Tq. Dist. Dhule.
3. Dhananjay @ Dhanraj Rohidas More,
Age : 28 years, Occ: Agriculturist,
R/o. Anakwadi, Tq. Dist. Dhule.
4. Vinayak s/o Kautik Khile,
Age : 35 years, Occ: Agriculturist,
R/o. Anakwadi, Tq. Dist. Dhule.
5. Karbhari Chitaman Khile,
Age : 48 years, Occ: Agriculturist,
R/o. Anakwadi, Tq. Dist. Dhule.
6. Pandurang s/o Kautik Khile,
Age : 27 years, Occ: Agriculturist,
R/o. Anakwadi, Tq. Dist. Dhule. ...Applicants

Versus

The State of Maharashtra

...Respondent

.....
Mr. N. S. Ghanekar – Advocate for the Applicants
Mr. S. D. Ghayal – Addl. P P for respondent/State
Mr. Mukul S. Kulkarni – Advocate to assist P.P
.....

**CORAM : R. G. AVACHAT
AND
NEERAJ P DHOTE, JJ.**

DATED : 14TH FEBRUARY, 2024

PER COURT : -

1. Learned advocate Mr. Joydeep Chatterji for the Applicants
in Criminal Application No. 4347 of 2023 submits that he is not pressing

the application for Applicant No. 1 – Nandu Khile and Applicant No. 2 – Deepak Khile, at this point of time with liberty to file fresh application.

2. Criminal Application No. 4347 of 2023 to the extent of Applicant Nos.1 – Nandu Khile and 2 – Deepak Khile, stands dismissed as withdrawn.

3. The applicants are seeking suspension of substantive sentence and bail.

4. Heard learned Advocates for the Applicants, learned Addl. PP for the respondent/State and learned advocate assisting the PP

5. By Judgment and Order dated 08.11.2023 passed by learned Additional Sessions Judge, Dhule in Sessions Case No. 79 of 2016, the applicants have been tried and convicted for the offence punishable under Sections 302, 324, 341, 143, 147, 148 r/w 149 of the Indian Penal Code and sentenced as follows :

Sr. No.	Under Section	Sentence
1.	302 r/w 149 IPC	Imprisonment for life and fine of Rs. 5,000/-, in default, simple imprisonment for period of six months.
2.	324 r/w 149 IPC	Rigorous imprisonment for one year.
3.	341 r/w 149 IPC	Simple imprisonment for One Month
4.	143 r/w 149 IPC	Simple imprisonment for Three months.
5.	147 r/w 149 IPC	Simple imprisonment for Six months.
6.	148 r/w 149 IPC	Simple imprisonment for Six months.

6. We have gone through the evidence available on record. The incident is dated 18.05.2016 in the night at around 21:30 hrs. When the informant Prithviraj Pitambar Chavan was travelling along with his father on Two-wheeler, the persons by name Nandu, Deepak and Sharad along with ten to twelve others had come with sticks and iron rods. They assaulted the informant and his father. The informant's father succumbed to the injuries in the hospital. The informant also suffered certain injuries.

7. Admittedly, the informant has named in the FIR only three accused persons, namely, Nandu, Deepak and Sharad. He nowhere stated the names of the applicants in the FIR, however, in his supplementary statement which was recorded on the following day, he named the other applicants as the assaulters. Another aspect is that the statement of another eye-witness by name Anna Shravan Sarode (PW9) was recorded after ten days. It is seen that the assaulters who are named in the FIR have been attributed the role of holding sharp weapon. The injuries suffered by the informant were simple in nature except one fracture to his hand. Undisputedly, all the applicants were on bail during the trial. Learned Additional Public Prosecutor relies on the judgment in the case of **Omprakash Sahni Versus Jai Shankar Chaudhary & Anr. Etc.** reported in AIR 2023 SC 2202, wherein it has been observed as follows : -

“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 or there in the case of the prosecution. Such would not be a correct approach.”

8. In view of the above, at this stage, *prima facie* it can be said that the applicants have arguable case. The appeals will not come up for hearing in the near future. In this view of the matter, we proceed to pass the following order : -

ORDER

- (i) Criminal Applications are allowed.
- (ii) The substantive sentence imposed upon the applicants, namely, Kautik Chintaman Khile, Pravin Amrut Kshirsagar, Hilal Narayan More, Bhatu Waman Nimbalkar, Ramesh Waman Nimbalkar, Sagar Karbhari Khile, Ganesh Mahadu More, Dhananjay @

Dhanraj Rohidas More, Vinayak Kautik Khile, Karbhari Chitaman Khile and Pandurang Kautik Khile by learned Additional Sessions Judge, Dhule, vide Judgment and Order dated 08.11.2023 passed in Sessions Case No. 79 of 2016, is suspended during the pendency of the present Appeals.

- (iii) The Applicants be released on bail on their furnishing P R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only), each.
- (iv) Bail before the Trial Court.

9. Criminal Applications are accordingly disposed of.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde