



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4354 OF 2023
IN
CRIMINAL APPEAL NO. 1144 OF 2023

1. Kalyan Baburao Bhavale,
Age : 50 years, Occu. : Agriculturist,
2. Jagannath Kalyan Bhavale,
Age : 28 years, Occu. : Agriculturist,
Both R/o. Palatachiwadi, Post Golatgaon,
Tq. & Dist. Aurangabad.

... Applicants.
(Orig. Accused Nos.1 and 2)

Versus

1. The State of Maharashtra,
Through Police Station,
Karmad Police Station, Aurangabad
2. Sominath S/o. Karbhari Korde,
Age : , Occu. : Agriculturist,
Both R/o. Palatachiwadi, Post Golatgaon,
Tq. & Dist. Aurangabad.

... Respondents.
(R/2 is complainant)

...

Mr. R. V. Gore, Advocate for Applicants
Mr. N. D. Batule, APP for Respondent – State
Ms. Siddhi Atul Kothari h/f. Mr. S. G. Ladda, Advocate for
respondent No.2 (Through V.C.)

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24th JANUARY, 2024

RESERVED ON : 30th JANUARY, 2024

ORDER :

1. Convicts for offence under sections 307, 323, 504 and
506 read with 34 of Indian Penal Code (IPC) are hereby seeking
suspension of sentence and grant of bail during pendency of appeal,

wherein they have assailed judgment and order passed by learned Additional Sessions Judge, Aurangabad dated 09.11.2023 in Sessions Case No. 561 of 2019.

2. Learned counsel for applicants would strenuously submit that, both applicants were convicted for offence under section 307 and they have been awarded sentence of 10 years. Briefing the court about the occurrence and background in which it took place, it is submitted that, there is no strong, clinching evidence. It is doubtful whether so called eye witnesses were present at the time of occurrence. He pointed out that, there was already existing enmity on account of some instances of abuses. There are allegations of use of axe, but its blunt side was said to be used. As regards to applicant namely Kalyan is concerned, he is old aged and no role is attributed to him. Main role is attributed to Jagannath. He submitted that, evidence of medical expert, who examined complainant, in cross has admitted about possibility of injury on account of fall on a bullock cart. It is the very defence of applicants in trial court also. He pointed out that, applicants were on bail during trial and as much more time would be required to decide the appeal, he prays for relief of suspension of sentence as well as grant of bail.

3. Learned APP pointed out that, offence is serious. There

was attempt to kill. Apart from direct eye witness and evidence of injured, there is supportive medical evidence. That, in view of enmity, there is possibility of misuse of liberty and also possibility of re-occurrence. For all of above reasons, he prays to dismiss the application.

4. Learned counsel for victim also strongly opposed the application by pointing out the role attributed to both the applicants. According to her, there is direct eye witness account. Medical expert has categorically attributed injuries to be grievous. That, suggestion about fall has been refuted. Even learned counsel pointed out that, there is every possibility of misuse of liberty if granted.

5. In view of above submissions and papers are visited, which revealed that, crime was registered on the basis FIR at the instance of Sominath Korde i.e. for offence under section 307, 323, 504 and 506 read with section 34 of IPC. Prosecution has adduced evidence of as many as 8 witnesses. On visiting evidence of informant PW2 Sominath, it is emerging that, occurrence took place on 27.01.2018. He has alleged that, while he was going for answering call of nature, there was quarrel between his maternal uncle Rambhau and maternal uncle's son Vithal. Present applicant Kalyan arrived and hurled abuses. He has alleged about being

slapped and on instigation of applicant no.1, applicant Jagannath seems to have picked axe lying in the bullock cart and has further put it to use. Medical expert PW7 Dr. Gaurav Choudhari is also examined and injury certificate is also shown to be placed on record. Injured seems to have suffered grievous injury on left side of the face.

6. Therefore, apparently, there is use of deadly weapon. Role attributed to Jagannath is of hitting axe on instigation by applicant Kalyan. Therefore, though *prima facie* roles are distinctly coming on record, it is noticed that, Jagannath had not come armed and he has used axe lying in the bullock cart. Learned counsel submitted that, during trial applicants were on bail.

7. In the light of above circumstances, relief as prayed deserves to be granted. Hence, I proceed to pass following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicants i) Kalyan Baburao Bhavale and ii) Jagannath Kalyan Bhavale in Sessions Case No.561 of 2019 by the learned Additional Sessions Judge Aurangabad on 09.11.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.1144 of 2023.

- (iii) The applicants be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) each with two solvent sureties each in the like amount.
- (iv) The applicants shall not commit any criminal activity.
- (v) The applicants shall not enter the vicinity of village Palatachiwadi, Tq and Dist. Aurangabad, 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 they 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, J.)