

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2794 OF 2024
IN
CRIMINAL APPEAL NO. 817 OF 2021

Jayadeep @ Hanma Raju Chavan .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Aniket Nikam i/b Mr.Amit Icham for the Applicant.

Dr.Ashvini A. Takalkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 01st AUGUST, 2024

P.C:-

1. The learned counsel Mr.Nikam representing the Applicant, who has filed an application for suspension of sentence and for securing his release on bail, has placed reliance upon the two orders passed by this Court in the case of Riyaz alias Kalya Sadaru Desai i.e. Accused No.3 and Vishal s/o Sagar Giri i.e. Accused No.4, which are passed on 29/02/2024 and 19/04/2024 respectively. Mr.Nikam seeks extension of benefit of these orders to the Applicant and, therefore, we have perused the said orders, which are placed before us.

Upon perusal of both the orders, one thing is evident that the Division Bench, by referring to the decisions of the Apex Court in the case of *Saudan Singh Vs. The State of Maharashtra*¹ and *Suleman Vs. The State of Uttar Pradesh*² as well as in the case of *Dinesh @ Paul Daniel Khajekar Vs. State of Maharashtra & Ors. (Cri.Appeal No.2987 of 2023 arising out of S.L.P. (Crl) No.10320 of 2023 decided on 25/09/2023)*, on the ground that the applicants are incarcerated for more than ten years, had deemed it appropriate to suspend the sentence and release the applicants on bail.

In the wake of the decision of the Apex Court in the case of *Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr.*³, a judgment delivered at a later point of time i.e. after the judgments delivered in *Saudan Singh* (supra) and *Suleman Singh* (supra), where it is specifically observed that while considering the application under Section 389 of the Code of Criminal Procedure, the merits of the matter will have to be appreciated, as the benefit of the presumption of innocence is not available to an accused, who is convicted by a competent court and the Court will look into the material evidence that was placed before the trial Judge, who derived a finding of conviction resulting into imposition of sentence, we have perused the material placed before us, which include the impugned judgment dated 06/03/2021, passed by the Sessions Judge, Kolhapur and the evidence of the prosecution witnesses.

1 2022 SCC OnLine SC 697

2 2022 SCC OnLine 714

3 (2023) 6 SCC 123

2. The incident is alleged to have taken place on 02/02/2014, when the two groups clashed, resulting into two murders committed near Koyaskal Chowk and under the flyover and it is also brought on record by the prosecution that the some prior money transaction, happened to be the cause for the murders. Pursuant thereto, a meeting was held on 31/01/2014 to settle the matter amicably, but it was not successful and as a sequel, when both the deceased i.e. Samir Khatik and Nitin Shinde alongwith their friends were standing near the house of Samir Khatik, the accused persons arrived on the spot in Tavera car, armed with weapons and chased the deceased. Both the deceased were assaulted at different places and through distinct witnesses, the act of assault has come before the trial Judge.

As far as PW 1-Amar Shirse, who was acquainted to both i.e. present Applicant as well as Riyaz, Accused No.3, who is directed to be released on bail is concerned, he refer to the previous incident of 31/01/2014, when Nitin, one of the deceased, asked both the accused, whether they want to settle the dispute.

Thereafter, he narrate the incident of 02/02/2014, when he alongwith Vishal had gone to Ichalkaranji to meet some relatives of Vishal and while returning he received phone call from his maternal uncle, Nitin and, therefore, he informed Vishal that they will stop at Temblai Naka to collect his uncle. While they were proceeding from Temblai Wadi bridge towards Takala, he witnessed four persons chasing Nitin Shinde, his maternal uncle, and he could clearly watch the same in the electric light, though it was nighttime. When he stopped the

motorcycle, he noticed that accused No.1 i.e. the present Applicant has caught hold his uncle from back, but he somehow managed to free himself and started running towards Temblai Naka, the present Applicant chased him when his uncle fell down and on holding his hands, Riyaz, accused No.3 stabbed him by knife. Thereafter two other persons assaulted him and it is also his version that accused No.2 lifted stone from the side of the road and hit on his uncle's head.

Due to fear, he fled away towards his house and apprised his mother as well as the persons in the neighbourhood about the incident, when he came to know that even Samir Khatik was found murdered below the railway bridge and he was stabbed by sword, sickle and knife and this was on account of previous dispute revolving around money being borrowed.

3. Another witness i.e. PW 2-Sagar Sontakke, who also refer to the past enmity involving money, narrate the incident dated 31/01/2014. He is also a witness to the incident that took place on 02/02/2014 and according to him, at around 10.00 p.m., Lalya, Samir Khatik and Nitin Shinde came to his house on bike and Nitin told him that his nephew i.e. PW 1 and Vishal Ghaste had gone to Ichalkaranji on motorcycle and he told him to bring motorcycle at Temblai Naka to collect him. While PW 2 was standing in front of his door under one tree, he noticed one Tavera car coming from the side of public toilet at Kondala and halted by their side. From the said car, the present Applicant, Ghayal Kawale and Kalya Desai i.e. Accused No.3 alighted alongwith 5 to 6 unknown persons. On seeing that

they were armed with knife, sword and sickle, Samir and Nitin ran away towards flyover bridge, whereas he ran away towards public toilet at Kondala side. Even the other person i.e. Lalya also ran to a shelter. The two persons followed PW 2 and they pelted stones on him.

After a while, when he proceeded towards direction of Samir and Nitin, he noticed that Samir was murdered near one closed room situated below flyover bridge and he made attempt to call Nitin, but received no response. When Nitin was searched for, it was revealed that he was also murdered at Telephone office square.

Another witness is the mother of Samir, one of the deceased, being examined as PW 3, though she has not actually seen the incident, but saw the accused persons running.

4. Another eye witness to the incident is PW 5-Vishal, who was accompanying PW 1 and his statement is in sync with PW 1, when he speak about he accompanying Amar Sirse, on the request of Nitin Shinde, the deceased. The version of PW 1 is corroborated by this witness and a specific role has been attributed to the present Applicant, as he has deposed that he saw Nitin Shinde being chased by Hanmya Chavan, Kalya Desai, one fair unknown person alongwith 2-3 unknown persons.

He further deposed that Kalya was carrying a knife, whereas the unknown person was having a sword and he could see them in light of flood lamp in Koyaskal chowk. In sync with PW 1, he has attributed role to the present Applicant.

5. Corresponding to the version of the eye witnesses are the postmortem reports of both the deceased, which have recorded multiple injuries and as far as Samir is concerned, he has sustained 18 injuries and as per PW 18, he found scalp haematoma over right fronto parieto, temporo occipital region as well as linear fracture of right frontal parietal, temporal and occipital bones. As far as Nitin Shinde is concerned, PW 18 has given cause of death as hemorrhagic shock due to injuries to vital organs and the postmortem report recorded 18 injuries on his person.

In addition, the prosecution has also examined Rahul Shingade, the panch witness on recovery of blood stained clothes as well as weapons i.e. sword and chopper from the present Applicant.

6. With the material placed before the Sessions Judge, the present Applicant stood convicted for committing the offences punishable under Sections 302, 147, 148, 352, 120B read with Section 149 of the Indian Penal Code. Since the presence of the Applicant on the spot was clearly established by the convincing evidence led by the prosecution, there is no scope to doubt the prosecution case, which has prompted the learned Judge to hand over conviction to the Applicant.

On being satisfied with the material before the Sessions Judge, which was sufficient to result into his conviction and considering the specific role assigned to him, we are not inclined to entertain the application and definitely not on the ground of parity, as we have examined the merits of the case

and have arrived at the conclusion that the Applicant does not deserve the relief prayed for in the Application.

Resultantly, the Application is dismissed.

(MANJUSHA DESHPANDE,J.) (BHARATI DANGRE, J.)