

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3363 OF 2023

IN

CRIMINAL APPEAL NO.1019 OF 2023

Vhanappa Shrishail Koli & Ors.

: Applicants

Vs.

The State of Maharashtra & Anr.

: Respondents

Adv. Priyal Sarda a/w Adv. Seema Dighe & Adv. Shubham Sane for the Applicants.

Mr. A. R. Patil, APP for the Respondent/State.

Adv. Nikhilesh Dilip Pote, Appointed for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 4TH APRIL, 2024

PC. :

1. Heard the parties.
2. Appeal is already admitted.
3. This Application is preferred seeking suspension of sentence and release of the Accused on bail. All the Applicants are held guilty of the offences punishable under Sections 307, 143, 147, 148, 323, 504 & 506 read with Section 149 of the Indian Penal Code. The maximum sentence awarded is 7 years and fine of Rs.1000/- in default to undergo further R.I. for 30 days for the offence punishable under Section 307 read with 149 of the IPC.

4. Learned Advocate for the Applicants vehemently argued that there is no evidence to prove the offence under Section 307 of IPC. For other offences the punishment awarded is not more than 6 months. He thus submits that except for Section 307 all the sentences are only for 6 months. On submitting this he pointed out the evidence of the victim and the doctor. The doctor in his evidence has opined that all the injuries on person of the injured victim were caused by hard and blunt object and all the injuries were simple. The patient was discharged within 48 hours. He was admitted for period from 12.50 am on 22nd March, 2016 till 3.00 p.m. on 23rd March, 2016. From the evidence of the victim he submits that he has improved the version before the Court and points out certain omissions brought on record in the cross-examination. He submits that out of 7 years punishment the Applicant No.1 has undergone more than 16-months, Applicant No.2 for 15 months, Applicant No.3 for 11 months & Applicant No.4 for 27 months in custody including custody during the trial and after conviction. His submission on merits is that the prosecution has failed to prove the case under Section 307 and that this sentence is short sentence for a fix period and out of that sentence the Applicants have already undergone substantial period of sentence. He relied on the order passed by the Apex Court in Criminal Appeal No.579 of 2024 in the case of ***Atul @***

Ashutosh Vs. State of Madhya Pradesh and also in Special Leave Petition (Criminal) No.1049 of 2024. The Hon'ble Apex Court has observed that normally bail should not be refused in the Appeal when the sentence is for fixed period and where Appeal is not likely to be heard before completion of such sentence.

5. Learned APP opposes the Application stating that the prosecution has clearly proved the case. There is ample evidence on record to hold Applicants guilty for the offence under Section 307 and prays for rejecting the Bail Application.

6. Learned Advocate for the Respondent No. 2 also vehemently opposes the Bail Application. He submits that the Medical Evidence supports the case of prosecution. The Applicants had carried knife and sword with them, which are seized by the prosecution. He thus submits that the intention was clearly to commit the murder and prays for rejection of the Application.

7. This Court has *prima facie* considered the evidence of the Victim and the Doctor. The Victim has improved the story before the Court. There are omissions brought on record, making the case of the prosecution for the offence under Section 307 doubtful. The Doctor's evidence also shows that the injuries were caused by hard and blunt object and were

simple in nature.

8. Considering that the Appeal is not likely to be heard in the near future, this Court is inclined to allow the Application. Hence the following order.

ORDER

- (a) The Application stands allowed.
- (b) The order of sentence dated 4th August, 2023 in Sessions Case No.219 of 2016 passed by the Learned Additional Sessions Judge, Solapur shall stand suspended.
- (c) The Applicants shall be released on bail on furnishing P.R. bond and solvent surety in the sum of Rs.15,000/-.
- (d) The Applicants shall not try to contact victim or any person from his family and the witnesses.
- (e) Applicants shall attend the concerned Police Station as and when called for.
- (f) The Applicant shall keep informed concerned Police Station about his residential address, mobile number

etc. and other contact details till disposal of the Appeal.

- (g) The Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.
- (h) The Application stands disposed of.

(KISHORE C. SANT, J.)