

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 997 OF 2024
IN
CRIMINAL APPEAL NO. 246 OF 2024

Mohd. Salim Abdul Khalik Shaikh ... Applicants/Appellants
and Ors.

V/s.

State of Maharashtra & Anr. ... Respondents

Mr. Sudeep Pasbola with Mr. Rahul Arote, for the
applicants/appellants.

Mrs. M.R. Tidke, APP for the State.

Mr. Harshad Bhadbhade with Mr. Nikhil Mallelwar I.by Mr. Sachin
Pawar, for the respondent no. 2.

CORAM : KISHORE C. SANT, J.

DATE : 3RD APRIL 2024.

ORDER:

1. Heard the parties.
2. The applicants-original accused are convicted for the
offence punishable under Sections 143, 147, 148, 307, 326, 323, 427,
504, 506 read with 149 of IPC by the Additional Sessions Judge, Thane
in Sessions Case No. 189 of 2013 vide judgment and order dated 29th
February 2024 are before this Court. The sentence awarded is as per

the table below:

Sr. No.	Sections	Punishment	Fine Amount
1.	307 read with section 149 of IPC	R.I. 7 years	Rs. 10,000/- and in default, to undergo RI for 4 months.
2.	326 read with section 149 of IPC	R.I. 5 years	Rs. 8000 and in default, to undergo RI for 3 months.
3.	323 read with section 149 of IPC	R.I 6 months	Rs. 1,000/-and in default, to undergo RI for 1 month.
4.	427 read with section 149 of IPC	R.I 1 year	Rs. 2,000/-and in default, to undergo RI for 2 months.
5.	143 of IPC	R.I 3 months	Rs. 1,000/-and in default, to undergo RI for 1 month.
6.	147 of IPC	R.I 1 year	Rs. 2,000/-and in default, to undergo RI for 2 months.
7.	148 of IPC	R.I 2 years	Rs. 2,000/-and in default, to undergo RI for 2 months.

3. By way of this application the applicants are seeking suspension of sentence and release of applicants on bail.

4. The facts in short:

5. The informant, one Majid Teli lodged the FIR with the Mumbra Police Station. It is stated in the FIR that on 23rd September

2012 at 9.00 a.m. while his brother was working in his shop one lady came there and threw the garbage in front of his shop. On asking as to why she threw the garbage, the lady said that she would throw the garbage there only. After this small altercation one person came to the shop of the informant and asked him as to why he spoke with the lady. The informant told that she was throwing the garbage, he tried to stop her and nothing more. However, the person asked as to how he dare to ask that lady and started threatening. The brother told this incident to his mother and bother. On that they immediately rushed to the shop. At around 9.30a.m. accused no. 2 Raju came there on the motor cycle immediately four brothers of Raju also came thre in a Car. They also started abusing to the brother. One of the accused even threw weighing scale from counter of the shop. They also beaten and assaulted the brother with the egg tray. Accused No. 3 again throw the weight from the shop, due to which the left eye of the informant got seriously injured. The accused thereafter again took wooden stick, bat, stump and iron road from the boot place of the car. The prosecution came to be lodged on these allegations. After filing of the charge-sheet and evidence, the applicants were found guilty of the offence by the trial Court.

6. Learned advocate for the applicant vehemently argued that there is no sufficient evidence on record to hold the accused guilty of the offence. Injuries on Hamida Teli i.e. mother of the informant are simple injuries caused by blunt object. Injury on Jalal Teli is grievous injuries. So far as Majid Teli injuries are concerned, his injuries are again caused by blunt object. The complaint was lodged against the unknown persons. Names of the applicants came to be subsequently added in the investigation. The applicants are falsely implicated in the offence. From the evidence, it cannot be said that there was intention to cause murder of the informant. The weapon allegedly used are bat and stumps. No dangerous weapon is used. Thus he prays for allowing the application.

7. Learned APP submits that assault was brutal assault. All the accused persons came to the spot with predetermination. It has come in the evidence that the accused persons were carrying bat, hockey stick and stumps etc. in the dicky of the car. Even at the shop accused No. 3 threw a weight with such a force that injured Jalal has lost his vision. Thus he submits that though the sentence is for a fixed term, in this case the bail should not be granted only on that count.

8. Learned advocate for respondent no. 2 also vehemently

opposes the bail application. He submits that it is only because the police van was passing through the road the accused persons stopped assault, otherwise they were prepared to commit murder and thus it is a clear case that the accused had come with predetermination to commit the murder and for that to get the cause deliberately, the lady accused-Hamida came to the shop and threw the garbage. All these things show that it was deliberate attempt on the part of the accused persons.

9. The learned advocate for the applicants relied upon the judgment in the cases of '*Kiran Kumar vs State of MP*'¹, '*Bhagwan Rama Shinde Gosai and Ors. Vs. State of Gujarat*'², '*Manoj Atmaram Desale vs The State of Maharashtra*'³ and '*Sudam Laxman Patil vs State of Maharashtra*'⁴.

10. The learned advocate for the respondent relied upon the judgment in the cases of '*The State of Maharashtra vs Jethmal Himatmal Jain and Anr.*'⁵.

11. Now it is well settled law when the sentence is for a fixed term and if the appeal is not likely to be heard within near future, no

1 (2001) 9 SCC 211

2 (1999) 4 SCC cases 421

3 Cri. Application no. 2451/ 2023 in Cri. Appeal No. 598/2023

4 (2018) SCC online Bom 17579

5 1994 (4) Bom. C.R 103

sentence would be suspended.

12. In the present case, maximum sentence awarded is 7 years for the offence punishable under section 307, for the offence punishable under section 326 it is 5 years with fine amount. For all other offences it is less than 2 years.

13. Considering the submissions and keeping in mind that there are no chances of the appeal reaching for final hearing near future, this Court is of the opinion to allow the application subject to certain conditions, hence the following order:

ORDER

- i) Application is allowed.
- ii) Substantive sentence awarded by the Additional Sessions Judge, Thane in Sessions Case No. 189 of 2013 dated 29th February 2024, stands suspended, till final hearing of the appeal.
- iii) The applicants shall be released on bail on furnishing P.R. bond of Rs. 15,000/- and one solvent surety in the like amount, subject to deposit of the fine amount if not paid in the trial Court.
- iv) The applicants to attend the police station once in fortnight i.e. on every 2nd and 4th Saturday

between 11:00am to 1:00p.m

(v) The applicants shall not enter into jurisdiction of Mumbra Police Station.

vi) The Applicants shall furnish details of residential address and other contact details such as mobile number etc. to the concerned police station. If there is any change in the contact details the same will be immediately informed to the concerned police station.

14. With this, the application is disposed of accordingly.

(KISHORE C. SANT, J)