

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***INTERIM APPLICATION NO.3245 OF 2024
IN
CRIMINAL APPEAL NO.1064 OF 2017***

1) Mitawa Chandraprakash Godale; and Applicants/
2) Sachin Rajpal Kajanya Appellants

Versus

The State of Maharashtra
(At the instance of Khadaki Police Respondent
Station vide C.R.No.146 of 2014)

***WITH
CRIMINAL APPEAL NO.1012 OF 2019***

Dinesh Jumman Godale Appellant

Versus

The State of Maharashtra Respondent

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Ms.Anjali Patil a/w. Mr.Tohid Shaikh, Advocate for the
Applicants/Appellants.

Mr.J.P. Yagnik, APP for Respondent – State.

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***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 28th AUGUST 2024.

ORDER : (Per : Manjusha Deshpande, J.)

1 This is an Application for bail filed by original
accused nos.2 and 3 against the judgment and order passed by

the learned Sessions Judge, Pune, in Sessions Case No.687 of 2014 on 18th December, 2018.

The Applicants herein have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code (IPC) and sentenced to suffer imprisonment for life alongwith conviction under Section 307 read with 34 thereby sentencing the Applicants to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months alongwith conviction under Sections 4 and 25 of the Arms Act and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2000/-.

2 Being aggrieved by the said judgment and order, the Applicants have filed the substantive Appeal in this Court, pending which the present application has been filed.

3 It is contention of the Applicants that the decision in Appeal is likely to take its own time. They have already undergone imprisonment for 9 years. Considering the long wait, they may be granted bail pending the Appeal.

According to the Applicants, they have a very good case on merit. There is no cogent and sufficient material to prove the complicity of the Applicants. In spite of that they have been convicted and are required to undergo the punishment of life imprisonment. The incident on the basis of which the complaint came to be registered has occurred on 1st July, 2014, one Mallesh Vijay Gaikwad lodged the complaint and informed the police that Ravi Pardeshi and Rohan Kokakallu came to his house to catch pigs and to take it at Bopodi. Nilesh Pawar, Ravi Pardeshi, Rohan and Akash Pardeshi had caught the pig. Akash and Ravi proceeded on one motorcycle while Ravi and Rohan had proceeded on another motorcycle to Bopodi, Khadaki Bazar. Thereafter they had been to the house of Nilesh Pawar and left the pig there. On the same day at about 07:30 p.m., Mallesh Gaikwad and Ravi Pardeshi went to Wanwadi on motorcycle. While they were proceeding on the motorcycle, near Elphiston Road, they saw Nilesh Pawar proceeding on his Activa vehicle. Ravi called him and informed him about the pig left at his house. Thereafter they all proceeded towards Khadaki Bazar. When they came near Prakash Flower Shop, he noticed scuffle going on between four persons with Nilesh Pawar and Ravi Pardeshi.

4 When they reached there, Ravi Pardeshi asked Mallesh Gaikwad to call his friends. Mallesh Gaikwad immediately rushed to Bopodi and returned with Akash Pardeshi and Vicky. On returning they found Nilesh Pawar and Ravi Pardeshi lying on the spot. Both of them had sustained serious injuries on their head. Rohan immediately stopped one auto-rickshaw and they had taken Nilesh Pawar and Ravi Pardeshi to Sahyadri Hospital. Doctor examined both of them and declared Nilesh Pawar dead. Ravi Pardeshi was kept in ICU.

5 The Applicants have filed notes of evidence alongwith the present application. According to the Applicants there are two incriminating circumstance brought on record against them by the prosecution. First is the testimony of P.W.2 Ravi Ramu Pardeshi, who is an injured eye witness. In his testimony he has stated that he was called for Test Identification of the assailant in the Yerawada jail, and he has identified the assailants. He has identified Ashish Rajpal Kajaniya and Sachin Rajpal Kanajiya as assailants in the first round of Test Identification Parade (TIP) and has identified Mitawa Chandraprakash Godale and Dinesh @ Mama Jumman Godale, as assailant in second round of Test Identification Parade.

He has further testified that he has stated before the Magistrate that the present Applicant Mitawa was holding long screw driver during the assault. While Applicant Sachin brought iron rod from cycle repairing shop. The said statement was recorded before the Magistrate. However, in his cross-examination, he has given an admission that it is true that due to dark he could not see who came there and who assaulted whom. He has categorically admitted that the police had told him to identify the accused in the Test Identification Parade by showing their photographs, and accordingly he has given statement before the Magistrate as per the say of police. He was threatened by the police if he does not give statement as per their say, they would harass him. He has further admitted that he did know one of the assailant, and accordingly, he had told the police about him. But, the said unknown person is not one amongst the accused present. This admission of the said witness who is an injured witness makes the Test Identification inadmissible in evidence.

6 The other incriminating circumstance against the present Applicant No.1 is the recovery panchanama of the clothes. P.W.15 is the panch witnesses who has been examined to prove the said recovery panchanama. According to the said

witness, he was called in Khadaki Police Station, Pune, and was made to sit, while the policemen in the police station were busy doing their work. After some time he was asked to sign on one paper, which contained written matter by the police. After obtaining his signature on the said paper, he was allowed return. He has admitted that he does not know the contents of the said panchanama. He has admitted in the cross-examination that the police had not seized the clothes of the accused under panchanama in his presence, and in presence of other witness. He admitted that, the clothes of Applicant were not seized in his presence, nor had he affixed his signature on the label containing the said clothes.

Both the incriminating circumstances against the Applicants have not been proved by the prosecution, which pointed towards the guilt of the Applicants, which would link the Applicants to the offence.

7 From the deposition of witnesses and other evidence produced by the prosecution on record, the prosecution has not produced any reliable and cogent evidence on record against the present Applicants for sustaining conviction against him.

8 The evidence against the present Applicants is totally unreliable. There is no eye witness to the incident. The other corroborative evidence also suffers from infirmities and inconsistencies. The testimony of P.W.2, who is injured in the incident does not name the present Applicants. The recovery of the alleged blood stained clothes of the Applicants, is also not proved by the prosecution, as the memorandum panchanama itself is disputed by the panch witness. *Prima facie*, we find that the prosecution has not produced any substantive or corroborative evidence to prove the involvement of present Applicant ins the offence.

9 The learned advocate for the Applicants has brought to our notice that the co-accused in the present Appeal has been granted bail *vide* order dated 31st July, 2024 in Interim Application NO.625 of 2023. Hence, the Applicants who are similarly placed are entitled to similar reliefs on the ground of parity. We have gone through the said order. After going through the said order, we find substance in the statements of the Applicants. Therefore considering the Application on merits as well as on parity, the application of the A/pplicants deserves to be allowed.

10 We have heard the respective counsel and we have also gone through the notes of evidence placed on record. On bare scrutiny of the evidence we are of the opinion that there is every likelihood of Applicants succeeding in the Appeal. Considering that the Appeal will take its own time for disposal, and, the Applicants have already undergone 9 years of imprisonment, it would be appropriate to suspend the sentence of conviction passed against the present Applicants, and grant them bail on following conditions:

:: ORDER ::

- (i) The sentence imposed upon the applicant Mitawa Chandraprakash Godale and Sachin Rajpal Kajanya *vide* judgment and order dated 16th December, 2017, in Sessions Case No.687 of 2014, is hereby suspended during the pendency of the Appeal;
- (ii) The Applicants be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/-, each, with one or two sureties, in the like amount;
- (iii) The Applicants shall report to the concerned police station on first Monday of the month, once in every three months, till their Appeal is finally disposed off;

(iv) The Applicants shall inform from time to time, the concerned police station about their current residential address and mobile contact number and/or change of residence or mobile details, if any.

14 The Interim Application is allowed in the aforesaid terms and is accordingly disposed off.

All concerned to act on an authenticated copy of this order.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)