

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

**INTERIM APPLICATION NO.3773 OF 2024
IN
CRIMINAL APPEAL NO.1026 OF 2024**

1. Yogesh @ Babaji Khimgiri Goswami
2. Manoj Shankarlal Pujari
3. Dashrath Narayan Madav
4. Rameshchandra Sherbahadur Giri ...Applicants
Versus
The State of Maharashtra ... Respondent

Mr. Madhav Thorat i/b. Mr. Tushar V. Kadam for the Applicants.
Ms P. N. Dabholkar, APP for the Respondent-State.

CORAM : M. M. SATHAYE, J.

DATED : 25 NOVEMBER 2024

P.C.:

1. Heard learned counsel for the Applicants / convicts and learned APP for the Respondent / State.
2. This is an Application for suspension of sentence and grant of interim bail during the pendency of the above Criminal Appeal, which is already admitted and pending for final disposal.
3. The Applicants are Accused Nos. 1 to 4 are convicted by the impugned judgment and order dated 09/08/2024 passed by the Additional Sessions Judge, Thane u/s. 326 of Indian Penal Code and sentenced to suffer 7 years of simple imprisonment. The Applicants have suffered detention of 5 months and 9 days so far.

4. The case of the prosecution in short is that the informant - Savitri Singh's husband Vijay Singh had given hand loan of Rs.2.5 Lac to the Accused No. 5 - Shamu Tiwari. Vijay Singh died and the informant was in need of money. Hence, she went to demand the amount on various occasions and as such the informant was knowing the brother and staff of the Accused No. 5. On 22/04/2018 at about 9.30 p.m. when the informant went to the place of incident on her scooter, the Applicants were present at the Ganapati factory. At that time, Accused No. 5-Shamu Tiwari was not available. However, Accused No. 4 - brother of the Accused No. 5 started the dispute. Accused Nos. 3 & 4 assaulted the informant by fiber sticks on her head, left hand, both legs and above waist. At that time, Accused No. 2-Manoj also assaulted the informant by fists and kick blows over her stomach. Accused No. 1-Yogesh was instigating the Accused Nos. 2 to 4 to assault the informant and thus, abetted the crime. During the incident, the Accused No. 4-Ramesh Giri snatched the gold chain from the neck of the informant. However, as the mob gathered, all the Accused ran away. It is also the case that the Accused No. 5-Shamu Tiwari had directed other Accused over phone to assault the informant. The informant was admitted to the hospital. Her statement was recorded in presence of the resident Medical Officer on 23/04/2018 at 3.30 P.M. Accordingly, crime was registered and the investigation was carried out. The statement of witnesses were recorded. Spot Panchanama was conducted. One scooter alongwith fiber sticks, two mobile handsets, chappals etc. were seized in presence of two Panch witnesses.

5. It is recorded in the impugned order that P.W. No. 4-Rupesh Bhalerao is the eye-witness, who was working as a jockey / helper in the nearby club

run by the Accused No. 5-Shamu Tiwari. On the date of incident, he was present on the duty from 8.00 p.m. When he heard commotion, he came outside the club and saw that Accused Nos. 2, 3 & 4 - Manoj, Dashrath and Ramesh were abusing the informant - Savitri and found that all the Accused were assaulting with kicks and fists blows to the informant - Savitri. Accused Nos. 3 & 4 – Dashrath and Ramesh were seen holding fiber sticks, both of them assaulting the informant. He has stated that the informant fell on the ground and she had sustained injuries. He has identified sticks and accused present before the Court.

6. It is recorded in the impugned judgment that P.W. No. 5-Dr. Ramchandran Krishnamurthy, who is Orthopedic Surgeon has issued certificate. Initially informant was examined by the R.M.O. and he noticed various injuries on the informant, which were as below:

- (a) Close fracture of left forearm.
- (b) Fracture of left fibula
- (c) Deep CLW over parietal occipital region size 5 x 2 x 1 cm.
- (d) Friction abrasion of left side of face
- (e) Friction abrasion over left knee, and
- (f) Contusion on abdomen and back.

7. Learned Counsel for the Applicants submitted that admittedly no clothes of Accused were noticed with blood stains nor blood strains were found on fiber sticks. No person from the mob was examined. He submitted that there is no evidence to connect the prosecution story that the Accused No.5 was instigating the other Accused over phone.

8. Learned Counsel for the Applicants submits that the eye-witness was the interested witness because he knew the family of the informant since

childhood. Perusal of the oral evidence of the eye-witness, P.W. No. 4-Rupesh does not indicate so and it cannot be concluded at this stage that he was an interested witness. What is stated is that he resided in the same area as that of the informant's family since childhood.

9. It is further argued that the eye-witness was called upon by the victim later on, whose statement was recorded on 25/04/2018. Perusal of the evidence shows that he has denied such suggestion.

10. The aforesaid arguments can be considered at the time of hearing of the Appeal. The offence is grave. Informant lady was asking her money back. The manner in which assault is conducted on her using fiber sticks, appears brutal. There is eye-witness. Informant was found with multiple fractures alongwith deep CLW and contusion of abdomen and back. Opinion is expressed by PW5 - doctor that injuries suffered by the informant can be because of blunt weapon. In light thereof, I am not inclined to grant bail.

11. At this stage, learned Counsel for the Applicants submitted that all the Applicants are in the age group of 52 to 55 years and they are suffering from various ailments. He submitted that the Applicant No. 1 is suffering from kidney trouble, Applicant Nos. 2 and 3 are suffering from heart disease. The Applicant No. 2 is also suffering from paralysis and Applicant No. 4 is suffering from edema and deep vein thrombosis. He submitted that supporting medical documents are annexed to the Application.

12. I have perused the medical papers. Medical papers of Accused No. 1 are old of the year 2013, 2015 & 2017. Medical papers of Accused No. 2 suggests that he has suffered hospitalisation about 4 months ago in July 2024 but he was stable at the time of discharge. Medical papers of Accused

No. 3 suggests that he was admitted more than a year ago in October 2023 and he also seemed stable at the time of discharge. Medical papers of Accused No. 4 are of June 2024 and does not indicate serious health condition. Hence current medical condition needs to be evaluated for all the accused.

13. Therefore Application is rejected. The superintendent of the concerned jails where the Applicants are lodged, are directed to take the Applicants to government hospital for checking present health condition.

14. Liberty to apply for 'interim bail on medical grounds', in case of any serious health report. Hearing of the Appeal is expedited.

(M. M. SATHAYE, J.)