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

**INTERIM APPLICATION NO. 4475 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 574 OF 2024**

Hemant Raghu Khamkar and Anr.	.. Applicants
Versus	
The State of Maharashtra, Through Assistant Police Inspector	.. Respondent

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- Mr. Sumit Shankar Kate, Advocate for Applicants.
 - Mr. Chandrakant D. Mali, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.
DATE : OCTOBER 25, 2024.

P.C.:

1. Heard Ms. Kate, learned Advocate for Applicants and Mr. Mali, learned APP for Respondent – State.

2. Present Interim Application is moved urgently due to exigency expressed by the learned Advocate appearing for the Revision Applicants seeking suspension of sentence until the Criminal Revision Application is heard. Applicants are taken into custody on 16.10.2024.

3. There are two Revision Applicants before me. They are 45 and 40 years old. They have been convicted by the learned Trial Court for the offence punishable under Sections 148 and 326 readwith 149 of the Indian Penal Code, 1860 (for short “IPC”). The weapon used by

them is an axe (कु—हाड). Revision Applicants are agriculturists. First informant is the injured witness who has received injuries. Originally the trial commenced against 7 accused out of which by the 2019 order of the Trial Court to accused were acquitted and five accused were convicted. The learned Sessions Judge by his order dated 08.03.2019 suspended the sentence of the 5 convicted accused until the Appeal was finally heard and decided on 16.10.2024. By order dated 16.10.2024, learned Sessions Judge acquitted 3 out of 5 accused and resultantly upheld the conviction of the Revision Applicants before me.

4. Mr. Kate, learned Advocate would submit that on the date of pronouncement of the judgment by the learned Sessions Judge, Revision Applicants were apprehended and are behind bars since then. Interim Application seeks suspension of the sentence and bail for the Revision Applicants on the ground that Revision Applicants deserve parity with the co-accused. In view of the fact that the incident leading to the injury on the date of incident occurred due to dispute and provocation, *inter alia*, pertaining to a boundary dispute of the agricultural fields between the complainant / first informant and the family of the Revision Applicants. Parties are owners of neighbouring and adjacent lands.

5. That apart, it is pleaded that there is a serious dichotomy with respect to the deposition of the prosecution witnesses namely PW-

7, the Doctor examined by prosecution and in his deposition and more specifically his cross-examination, he has deposed on certain contradictions and omissions which cannot be considered to be credible.

6. Next, Mr. Kate would submit that Revision Applicants are breadwinners of their family and their incarceration would affect the sustenance of the family members. He has drawn my attention to the impugned decisions / judgments passed by the learned Trial Court dated 25.02.2010⁹ appended at page No.69 of the Application and judgment dated 16.10.2024 appended at page No.20 of the Application passed by the learned Sessions Judge. It is seen that with respect to the injury sustained by the complainant / first informant, there are 3 fracture injuries, one to the leg and two to the left forearm. A dichotomy is expressed while cross-examining the Doctor – PW-7 as to whether the said injuries would be caused from a fall from the tractor or a tree over the body to which the Doctor has expressed an opinion affirmatively.

7. Prosecutions' case as argued by Mr. Mali, learned APP for the State is based on the evidence of the injured eye witness to contend that Revision Applicants caused the three injuries to the complainant / first informant. It is seen that the dispute between parties occurred due to the *lis* on the issue of boundary of their respective agricultural

fields and infact it is the prosecution witnesses' evidence itself that some of the accused who have been exonerated by the Trial Court in 2019 and subsequently by the learned Sessions Judge in 2024 are women who had allegedly assaulted the complainant / first informant with sticks.

8. What is seen is the statement and FIR of the informant is that he has stated that he was hit by the Revision Applicants with the reverse side of an axe (कु—हाड) resulting in his fall on the ground. In that context, it was the case of the Revision Applicants in defence that the injuries which were caused to the left forearm and the left leg are due to the fall and would not be a direct result of the use of the alleged weapon. It was the prosecution's specific case that the injured witness / complainant was assaulted with sticks, but the same has not found favour and those women accused to have infact used the sticks have been exonerated.

9. After reading both the decisions / judgments and more specifically the decision of the learned Sessions Judge, it appears that because of the civil dispute of the boundaries of the agricultural fields between both the parties, the skirmish took place and in that view of the matter, the analysis of the evidence done by the Courts below will have to be considered for considering the case of the two Revision Applicants before me and more specifically in view of the fact that 5

original accused have been completely exonerated by both the Courts below.

10. Hence, in view of the above, an arguable case is made out by Mr. Kate for allowing the present Interim Application for bail and suspension of the sentence of the Revision Applicants before me until the present Criminal Revision Application is finally heard and decided by the Court.

11. In that view of the matter, I direct immediate release of the Revision Applicants before me who has apprehend on 16.10.2024 and have been incarcerated in prison since then. Hence, the following order:-

- (i) Applicants be released on bail in C.R. No.28 of 2014 registered with Pusegaon Police Station, District Satara on their furnishing P.R. Bond of Rs.10,000/- with one or more solvent sureties in the like amount;
- (ii) Applicants shall report to the concerned Police Station once every three months on the first Monday of the quarter or as and when called;
- (iii) Applicants shall keep the Police Station informed of their current address and mobile contract number and / or change of residence or mobile details, if any, from

time to time;

- (iv) Applicant shall not tamper, pressurize or threaten the prosecution witnesses and maintain good behaviour;
- (v) The concerned Jail Authorities / Superintendent of Satara / Kolhapur prisons wherever they are presently lodged are directed to take cognizance of a server copy of this order and release the Revision Applicants immediately on receiving the server copy of this order in accordance with law; and
- (vi) Registry of this Court is directed to forward a copy of this order immediately to the concerned Jail Authorities / Superintendent of the concern prison.

12. Place the Criminal Revision Application on Board in due course.

13. In view of the above directions, Interim Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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