

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 35 OF 2024
IN
CRIMINAL APPEAL NO. 355 OF 2022

Premlal @ Prema S/o Asharfilal Yadav

Vs.

State of Maharashtra, Thru. PSO, Deolapar PS, Tah. Ramtek, Dist. Nagpur

AND
CRIMINAL APPLICATION (APPA) NO. 36 OF 2024
IN
CRIMINAL APPEAL NO. 355 OF 2022

Sunil S/o Gopal Yadav

Vs.

State of Maharashtra, Thru. PSO, Deolapar PS, Tah. Ramtek, Dist. Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.P. Bhandarkar, Advocate for applicants in both
applications.

Mr. M.J. Khan, APP for respondent/State.

Mr. A.K. Bhangde, assist to prosecutor.

CORAM : VINAY JOSHI, AND
SMT.VRUSHALI V.JOSHI, JJ.

DATE : 09.02.2024

Applicants, namely, Sunil Yadav (accused
No.3) and Premlal Yadav (accused No.8) have
applied for suspension of execution of sentence
passed in Sessions Case No.137/2015 vide judgment
and order dated 30.04.2022, whereby both have

been convicted for the offence punishable under Sections 302 read with 34 and Section 149 of the Indian Penal Code.

2. It is the prosecution's case that on the date of occurrence, the applicants along with co-accused have barged into the office whereby they committed murder of one Dhanesh by means of fire arm, so also assaulted informant PW-9 Smit by means of weapons. Though the prosecution has examined number of witnesses, however, the prosecution case mainly rests on the evidence of PW-8 Samir and PW-9 Smit who are eye witnesses to the occurrence. Therefore, we prefer to go through the evidence of these witnesses. PW-8 Samir stated the occurrence in short that on the date of occurrence around 5 p.m. in the evening by two vehicles, 10 to 12 assailants arrived in the office. PW-8 Samir has identified Tufan and two others, who are Malkhan and one Indersing. He stated that at the instigation of co-accused, Tufan fired at the chest of Dhanesh which proved to be fatal. PW-8 Samir has not stated the names of other assailants, however, he claimed to be identified them in the test identification parade which was conducted after five months. Precisely, PW-8 Samir has not stated either presence or role of

Premlal or Sunil but, he has identified Sunil in his test identification parade.

3. With this, we have considered the evidence of another important witness PW-9 Smit, who is informant too. He has stated the genesis of the incident which took place one day prior to the actual occurrence. It is his evidence that there was a road rage in which applicant Sunil and co-accused Nilu had a quarrel with deceased Dhanesh where they threatened him to kill. It was followed by the occurrence on the following date in which the witness stated that all persons have arrived in the office. He deposed that initially, applicant Sunil uttered that due to yesterday's occurrence, today he brought so many persons to see him. Sunil initially assaulted deceased by means of wooden log, then Nilu also beat the deceased and then, Tufan fired at the deceased. This witness has not stated the role of Premlal besides mere presence. Admittedly, neither weapons nor blood stained clothes have been seized from either of the applicants.

4. In the above context, we have taken a review of the incriminating material which is running against applicants Premlal and Sunil. We

may repeat that evidence of PW-8 Samir is totally silent about even the presence of Premlal. However, PW-9 Smit though stated the presence of Premlal but has not ascribed any role. Having regard to above material, his liberty cannot be curtailed for indefinite period. Arguable case is made out to his extent.

5. So far as, the applicant Sunil is concerned. PW-8 Samir though not state his presence, however, he has identified him in test identification parade. Moreover, PW-9 Smit has specifically stated that the Sunil was the cause for entire episode. He has specified the earlier quarrel of Sunil with deceased followed by Sunil taking a lead by bringing his fellow colleagues in the office of deceased. Moreover, PW-9 Smit has specified the role of Sunil which initiated the quarrel.

6. Shri Bhandarkar, learned counsel for applicants would submit that as per evidence of PW-9 Smit, Sunil as well as Nilu have allegedly assaulted the deceased, however, the trial Court has acquitted Nilu despite the same set of evidence. At this stage, it is difficult to conclude that both stands on similar footing. However, we may say that the acquittal of Nilu is already subject matter of

challenge, by way of an appeal filed by the informant. Besides that PW-8 Samir has identified Sunil in the prior test identification parade. On the background of prior incident there is prima facie material against Sumit about his active participation. The offence is serious in nature, hence, we are not inclined to exercise our judicial discretion in favour of applicant Sunil.

7. In view of above, Criminal Application (APPA) No.35/2024 pertaining to Premlal is allowed.

8. Execution of substantive sentence passed in Sessions Case No.137/2015 to the extent of Premlal stands suspended till disposal of appeal.

9. Applicant – Premlal @ Prema S/o Asharfilal Yadav shall be released on bail on his furnishing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

10. The trial Court shall issue release warrant only after ensuring that he has deposited entire fine amount.

11. The Criminal Application (APPA) No.36/2024 of accused Sunil S/o Gopal Yadav stands rejected.

12. The applicant Sunil is at liberty to apply fresh to this Court, if appeal has not reached hearing within one year.

(SMT. VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)