



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

CRIMINAL APPLICATION (APPA) NO.1214/2023

IN

CRIMINAL APPEAL NO.52/2024

Bhimsingh Sabjitsingh Tak Vs. State of Maharashtra

WITH

CRIMINAL APPLICATION (APPA) NO.235/2024

IN

CRIMINAL APPEAL NO.128/2024

Achisingh S/o. Sabjitsingh Tak and Ors. Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. J. Thakkar, Advocate for Applicant in Criminal APPA
No.1214/2023.

Mr. A. C. Jaltare, Advocate for Applicants in Criminal APPA
No.235/2024.

Mr. S. A. Ashirgade, A.P.P. for Non-applicant/State.

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

DATED : 07/03/2024.

. By way of Criminal Application (APPA) No.1214/2023, the applicant Bhimsingh Sabjitsingh Tak (accused No.5) is seeking for suspension of execution of sentence whilst by Criminal Application (APPA) No.235/2024, applicants Achisingh Sabjitsingh Tak (accused No.1), Karansingh Sabjitsingh Tak (accused No. 3) and Sabjitsingh Samshersingh Tak (accused No.4) are equally seeking suspension of execution of sentence passed by the Trial Court for the offence punishable under Section 302 of the Indian Penal Code in Sessions Case No.73/2018.

2. Initially, it has been pointed out to us that co-accused Baldeosingh Sabjitsingh Tak (accused No.7) and Sangatsingh Devisingh Bawari (accused No.2) have

applied to this Court seeking suspension vide Criminal Application (APPA) Nos.1294/2023 and 1142/2023 wherein after considering the merits, this Court has suspended their sentence. All the applicants above have primly canvassed that they are entitled for equal treatment on account of rule of parity. Besides, it is submitted that the prosecution has relied only on two eye witnesses, however, their evidence is doubtful. The State has resisted both the applications.

3. We have gone through our earlier order dated 08.02.2024, wherein we have *prima facie* analyzed the material and came to the conclusion that an entertainable cause has been made out and thus, it was the case to use discretion. In the light of that, we have again revisited the evidence of both the eye witnesses and found that there is no reason to deviate from our earlier view, which was expressed while granting suspension to Baldeosingh and Sangatsingh on the ground of parity. The evidence of both the eye witnesses does not carve out any distinct role to the present applicants nor there is any other material against them.

4. Learned A.P.P. is unable to point out any distinguishing factor to deny the rule of the parity.

5. In view of above, in these applications also we hold that entertainable cause has been made out in the appeal and thus, it is a case to exercise our discretion by invoking the rule of parity.

6. In view of above, both the applications are allowed. The execution of substantive sentence passed in

Sessions Case No.73/2018 against the applicants Bhimsingh Sabjitsingh Tak (accused No.5), Achisingh Sabjitsingh Tak (accused No.1), Karansingh Sabjitsingh Tak (accused No. 3) and Sabjitsingh Samshersingh Tak (accused No.4) stands suspended till the final disposal of the appeal.

7. In the meantime, all the applicants shall execute P.R. Bond of Rs.50,000/- with one solvent surety in the like amount each.

8. Both the Criminal Applications are disposed of in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)