



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

CRIMINAL APPLICATION APPA NO.944 OF 2024

IN

CRIMINAL APPEAL NO. 538 OF 2024

PRABHAKAR ARJUN BHONGALE AND 2 OTHER

VERSUS

THE STATE OF MAHARASHTRA THROUGH PSO PS VIRUR TAH RAJURA DIST
CHANDRAPUR

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for the applicant/s
Ms S.V. Kolhe, APP for the State
Ms Seema Dhotre, Advocate for the non-applicant No.2 (appointed)

CORAM: VINAY JOSHI AND ABHAY J. MANTRI, JJ.
DATED : 22/10/2024.

1 Heard.

2 By this application, the applicants are seeking suspension of execution of sentence passed in Special (Atrocity) Case No.75 of 2022, whereby all three accused have been convicted for the offence punishable under Section 302, 504 read with Section 34 of the Indian Penal Code and under Section 3(2)(va) and 3(1)(r) (s) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short "SC-ST Act"). The maximum sentence imposed by the trial Court is to undergo imprisonment for life for the offence punishable under Section 302 of the IPC along with fine.

3 This application is moved by the accused No.1-Prabhakar, and Accused No.3-Tarabai @ Bayabai, who are the husband and wife. Though the accused No.2-Rohit who is the son of accused No.1 and 3, is convicted, however, he has not applied for suspension of sentence.

4 At the inception, it necessitates us to bring on record certain facts. The accused are convicted under the provisions of the SC-ST Act, which mandate that the informant shall be made aware about the pending application in terms of the Section 15-A (5) of the SC-ST Act.

5 We have noted in earlier order dated 11.10.2024 that the several efforts have been taken to serve the informant regarding pendency of this application, but failed. In the circumstances, taking into account the applicants' right to seek suspension and bail, we have expressed that this application could be considered to the extent of passing interim order. The learned APP has updated us that the police have served intimation on 12.10.2024, however, she is absent. Already we have appointed Ms Dhotre, learned counsel, on behalf of the informant for protecting her interest. Having regard to above position, we have heard this application for final disposal.

6 Precisely, it is the prosecution case that the accused and deceased-Ganesh are neighbour. On 21.04.2022, around 6.00 p.m. there was quarrel in between them on account of a pet dog of the deceased. In the said quarrel, Accused No.1-Prabhakar caught hold the hands of the deceased while accused No.2 Rohit inflicted blow at the head of the deceased by rear side of the spade. The accused No.3-Tarabai has facilitated the rest. On the basis of the said occurrence, the report has been lodged by the widow Sunita on following date.

7 The prosecution has examined as many as six witnesses to establish the guilt and after fulfledge trial, all three accused have been convicted for aforesaid offences.

8 It is informed that during pendency of the trial, Accused No.1-Prabhakar and Accused No.-3 Tarabai, were on bail.

9 The learned counsel for the applicants would submit that the trial Court erred in arriving at a conclusion that the accused No.1-Prabhakar and Accused No.3-Tarabai had shared common intention with Accused No.2-Rohit in the alleged occurrence. We have been taken through the evidence of both the eye witnesses i.e. PW-1 Sunita and PW-2 Geetabai to content that their evidence is inconsistent on material part. Particularly, our attention is invited to the FIR (Exh.P-1) to contend that in earliest information no role was assigned to Accused No.3-Tarabai. Contextually, we have been taken through the evidence of informant-Sunita who has stated about the role of Accused No.3-Tarabai of handing over a spade to her son Rohit, however, it is an omission. However, it is submitted that another eye witness PW-2 Geetabai did not state the role of Prabhakar. In the circumstances, it is argued that the evidence against these two is not consistent and capable of making out a case of existence of another possible view.

10 The learned counsel for the applicants further argues that it is the case of a single blow that too by rear side of spade. Thus, the essentials to constitute the offence of murder would not attract. We have been taken through the Post Mortem Report to impress that it is the case of single injury by hard and blunt object. However, it is submitted that the incident erupted as of a sudden, only on a trivial issue of a pet dog and it is difficult to construe that all accused have conspired with each other.

11 Though the learned APP and the appointed counsel resisted this application, however, as per the above material which is brought to our notice, in our opinion, is sufficient to exercise our

judicial discretion in favour of the present applicants i.e. accused No.1-Prabhakar and accused No.3-Tarabai only. Apparently, the main role is that of Accused No.2-Rohit and it is also a matter for consideration as to what offence would be constituted in the facts and circumstances of the case. In view of that, the application is **allowed**.

12 Execution of the substantive sentence passed against the applicant No.1-Prabhakar and applicant No.3-Tarabai, stands suspended till final disposal of the appeal.

13 The applicant No.1-Prabhakar Arjun Bhongale and applicant No.2-Tarabai @ Bayabai Prabhakar Bhongale shall be released on bail, on furnishing PR Bond of Rs.50,000/- each with one solvent surety of like amount.

14 Fees of the appointed counsel be quantified as per the Rules.

15 The application is **disposed of** accordingly.

(ABHAY J. MANTRI, J.)

(VINAY JOSHI, J.)

Later On :

At 1.30 p.m. the learned APP brought to our notice that the informant is present before us.

We request the learned APP to intimate the informant that already this Court has heard the application for suspension of sentence and allowed it.

(ABHAY J. MANTRI, J.)

(VINAY JOSHI, J.)

Correction
carried out as
per Court's
order
dt.25.10.2024