



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

Criminal Application [APPA] No.1200 of 2023

in

Criminal Appeal No.746 of 2023

Mohd. Ayyaz Ab. Wahab and others

vs.

State of Maharashtra, through Government Pleader, High Court, Nagpur Bench, 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.V. Sirpurkar, Advocate for the Appellants/Applicants.

Mr. H.D. Futane, A.P.P. for the Respondent/Non-Applicant.

CORAM : M.W. CHANDWANI, J.

DATE : 24th JANUARY, 2024.

By the present application, the applicants seek suspension of substantive sentence passed in Session Trial No.205/2015 by the Additional Sessions Judge, Akola vide judgment and order dated 25/10/2023, thereby convicting the applicants as under :

- 1) *All the accused are hereby convicted for the offence p.u.s. 307 r/w 149 of the Indian Penal Code, 1860, for which, they are hereby sentenced to suffer imprisonment for a period of five years and pay a fine of Rs.10,000/- (Rupees Ten Thousand Only) each i/d the accused shall undergo simple imprisonment for a further period of six months. The imprisonment of the accused Mohd. Riyaz Ab. Wahab shall be **rigorous** whereas, the imprisonment of other accused shall be simple in nature.*
- 2) *Accused Shaikh Mobin Shaikh Munaf and Mohd. Riyaz Ab. Wahab are hereby convicted for the offence p.u.s. 148 of the Indian Penal Code, 1860, for which, they are hereby*

*sentenced to suffer imprisonment for two years and a fine of Rs.2,000/- (Rupees Two Thousand Only) each i/d they shall undergo simple imprisonment for a further period of one month. The imprisonment of the accused Mohd. Riyaz Ab. Wahab shall be **rigorous** whereas, the imprisonment of Shaikh Mobin Shaikh Munaf shall be simple in nature.*

- 3) *Accused Shaikh Jamil Shaikh Munaf, Abdul Jahir Abdul Jamir and Mohd. Ayyaz Ab. Wahab are hereby convicted for the offence p.u.s. 147 of the Indian Penal Code 1860, for which, they are hereby sentenced to suffer simple imprisonment for one year and pay a fine of Rs.1,000/- (Rupees One Thousand Only) each, i/d they shall undergo simple imprisonment for a further period of fifteen days.*
- 4) *Accused Mohd. Riyaz Ab. Wahab is hereby convicted for the offence p.u.s. 3 r/w sec. 25 of the Arms Act, 1959, for which, he is hereby sentenced to suffer **rigorous** imprisonment for two years and a fine of Rs.10,000/- (Rupees Ten Thousand Only), i/d he shall undergo simple imprisonment for a further period of one month.*

02] It is contended on behalf of the applicants that the trial Court did not take into consideration the fact that there is no injury by the weapon-sword, which accused No.1-Shaikh Mobin was holding. According to him, there was no incised wound on the person of the victim. Therefore, there was no intention of the accused-applicants to kill the victim. According to him, the evidence on record suggests that no case under Section 307 of I.P.C. is made out and, therefore, the applicants have fair chance to succeed in the appeal.

03] *Per contra*, the learned A.P.P. for the State objected the application on the ground that injury is not a criterion for considering the offence punishable under Section 307 of I.P.C. It is submitted that the acts of the applicants were intentional and, therefore, the roles attributed to them are material. According to him, the evidence on record shows that the victim sustained injury by the weapon, which was used in the crime. It is submitted that the trial Court has rightly appreciated the evidence and, hence, sought rejection of the application.

04] Perusal of the record and evidence goes to show that there are allegations of using of sword, but none of the witnesses suggests that the injury sustained by the victim was caused by the weapon-sword. A case is made out to consider the evidence in detail at the time of final hearing of the appeal. That apart, the applicants have been convicted for a fixed term of five years. The hearing of the appeal may take time. In case the applicants succeed in appeal, the position will be irreversible. Therefore, considering both these aspects, a case is made out for suspension of sentence and grant of bail. Hence, the following order is passed :

- I. The substantive sentence passed in Session Trial No.205/2015 by the Additional Sessions Judge, Akola vide judgment and order dated 25/10/2023, shall remain suspended during pendency of the appeal.
- II. Applicants-Mohd. Ayyaz Ab. Wahab, Abdul Jahir Abdul Jamir and Mohd. Riyaz Ab. Wahab shall be released on bail on their furnishing P.R. Bond in the sum of Rs.20,000/- each with one solvent surety of the like amount for each, before the trial Court.

- III. The appellants shall appear before this Court at the time of final hearing, as and when directed.
- IV. The application is allowed and disposed of in the aforesaid terms.
- V. Criminal appeal be listed as per its turn.

JUDGE

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