



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

CRIMINAL APPLICATION (APPA) NO. 716 OF 2024

IN

CRIMINAL APPEAL NO. 805 OF 2018

Pankaj Jitendra Gajbhiye and ors. -Vs-The State of Maharashtra and anr.

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

Court's or Judge's Orders.

Mr.R.M.Daga, counsel for the applicants.
Mr. A.B.Badar, A.P.P for non-applicant-State.

CORAM **VINAY JOSHI &**
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10th SEPTEMBER,2024

1. Heard.
2. This is an application seeking suspension of execution of sentence passed by the learned Additional District and Session Judge, Chandrapur vide judgment and order dated 02.11.2018 in Sessions Case No.81 of 2015 by which present applicants and co-accused Sandip Dongre have been convicted for the offence punishable under Section 302 of the Indian Penal Code. The applicants Pankaj Jitendra Gajbhiye, Rajesh Namdeo Waghmare and Kartik Shankar Salve are accused Nos.1,3 and 4 before the trial court.
3. It is the case of the prosecution that on 29.04.2015, in the afternoon, applicants along with co-accused Sandip assaulted deceased Shaharukh by means of bricks, roof tiles and knife and done to death. The prosecution case is based on circumstantial evidence.

The conviction is recorded mainly on account of oral dying declaration given to PW-2, PW-5, PW-10 and seizure of incriminating material from some of the applicants.

4. The learned counsel appearing for non applicant No.2 having opposed the application contending that the evidence adduced by the prosecution is sufficient to nail the conviction moreover, he has submitted that trial court has rightly considered the evidence and thus the applicant does not deserve for suspension.

5. The learned counsel appearing for the applicants initially argued that since the applicants are behind bars from 10 years i.e. from 30.04.2015, at the threshold, it is the case for exercising discretion. Apart, there is no evidence of eye witnesses to the occurrence, the oral dying declarations are unreliable. The discovery is doubtful and thus the applicants are legitimately entitled for discretion.

6. The applicants' learned counsel relied on the decision in the case of *Sonadhar Vs. The State of Chhattisgarh* reported in **2022 LiveLaw (SC), 788**, wherein while dealing with the post conviction bail it is observed that a person, who has completed 10 years of sentence and appeal is not in proximity of hearing with no extenuating circumstances should be enlarged on bail. On the same line, reliance is placed on the decision in the

case of *Saudan Singh Vs. The State of Uttar Pradesh* reported in *Criminal Appeal No.308 of 2022 (@ SLP (Crl.) No.4633 of 2021)*, which has echoed the same pronouncement.

7. Concededly, there is no direct evidence of eye witnesses. One Abdul Sajid, who brought the injured perhaps having opportunity to know, but has not been examined. Some admissions have been shown to impeach oral dying declaration but at this stage, suffice to state that arguable points are made out. Only on account of seizure, it is difficult to bring home the guilt of the accused. Evidence of eye witness is not available since they turned hostile. The above material, makes out an arguable case. We are much impressed by the submission that the accused are in jail from last 10 years and still it is uncertain as to when the appeal will ripe for hearing. In above circumstances and peculiar facts, we deem it appropriate to exercise our discretion.

8. In view of above, the application is allowed. We, hereby, suspend the execution of substantive sentence passed by the learned Additional District and Session Judge, Chandrapur vide judgment and order dated 02.11.2018 in Sessions Case No. 81 of 2015 against the applicants: Pankaj Jitendra Gajbhiye, Rajesh Namdeo Waghmare and Kartik Shankar Salve (accused Nos.1, 3 and 4) till the disposal of the appeal.

9. In the meantime, the applicants shall furnish PR bond of Rs.50,000/-each with one solvent surety of like amount.

10. The applicants shall attend concerned Police Station on the first Monday of every month between 10.00 a.m. to 12.00 noon till the conclusion of the appeal.

11. The application stands disposed of in above terms.

JUDGE

JUDGE