



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 775 OF 2025
IN
CRIMINAL APPEAL NO. 138 OF 2025

Ganesh Ramkishan Dorle

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. C.C. Deshpande, Advocate h/f Mr. B.N. Magar, Advocate for applicant
Mrs. S.N. Deshmukh, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 10th MARCH, 2025

PER COURT :

1. This application is for suspension of substantive sentence imposed by learned Additional Sessions Judge-2, Hingoli on the applicant by judgment and order dated 10th January, 2025 in Sessions Trial No.123 of 2019. The operative part of the said judgment and order reads as under :-

- “1. All the accused are hereby convicted for the offence punishable under Section 143 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer rigorous imprisonment for six months each and to pay a fine of Rs.10,000/- (Rs. Ten thousand) each and in default of payment of fine, to undergo rigorous imprisonment for two months.*
- 2. All the accused are hereby also convicted for the offence punishable under Section 147 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer rigorous imprisonment for two years each and to pay a fine*

of Rs.15,000/- (Rs. Fifteen thousand) each and in default of payment of fine, to undergo rigorous imprisonment for three months.

3. All the accused are hereby also convicted for the offence punishable under Section 148 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer rigorous imprisonment for three years each and to pay a fine of Rs.25,000/- (Rs. Twenty fivethousand) each and in default of payment of fine, to undergo rigorous imprisonment for six months.

4. All the accused are hereby also convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code vide Section 235(2) of the Criminal Procedure Code, and sentenced to suffer life imprisonment each and to pay a fine of Rs.50,000/- (Rs.Fifty thousand) each and in default of payment of fine, to undergo rigorous imprisonment for one year.

5. Out of the amount of fine, Rs.300,000/- (Rupees Three lakh only) be paid to the wife of deceased namely Meera Shankar Dorle after its realization, as a compensation, after appeal period is over.

6. All the accused persons are entitled for set off under Section 428 of Cr.P.C. for the period which they had already under gone in the jail.”

2. The case of the prosecution, as seen from the papers on record, is that, deceased - Shankar Laxman Dorle, who was the son of Laxman Ganpati Dorle (informant), was assaulted by the applicant and co-convicts in the agricultural field on 21st May, 2019 in the evening. The deceased was assaulted by axe. The deceased succumbed to the injuries suffered in the assault at the hands of applicant and co-convicts. The incident was witnessed by sister of deceased, who was examined as PW 5 - Gangasagar Navnath

Dange. The informant, when came to the agricultural field, saw his son in dead condition and saw the convicts proceeding from the said field with axe in the hand of the applicant. The matter was reported to the police and the crime for the offence punishable under Sections 143, 147, 149, 302 of the Indian Penal Code came to be registered with Hingoli Police Station. After completion of the investigation, the applicant and co-convicts came to be charge-sheeted and after the trial, they came to be convicted.

3. It is submitted by learned counsel for the applicant that though PW 5 - Gangasagar Navnath Dange, sister of the deceased, claims to be the eye witness to the incident, her statement was recorded on the 7th day from the incident. He submits that the F.I.R. is lodged by the father of deceased, who is no more and, therefore, the F.I.R. was exhibited in the evidence of the policeman, who recorded his statement. The appeal would not come up for hearing in the near future and therefore, the application be allowed. He submits that the co-convicts have been granted bail by this Court vide order dated 18th February, 2025 passed in Criminal Application Nos. 368 of 2025, 294 of 2025 and 340 of 2025.

4. The application is opposed by learned A.P.P.. She submits that merely because the co-convicts have been granted bail, same cannot be the ground to allow the present application. She submits that the axe has been

recovered and seized at the instance of the applicant and blood, though inconclusive, was found on the axe. She submits that merely because the blood is inconclusive, does not render the recovery futile. She further submits that there is no ground to disbelieve the eye witness. She invites our attention to paragraph no.15 of the evidence of PW 6 – Dr. Sanjivan, who performed the postmortem report, which reads as under and ultimately urge for dismissal of the application :-

“15. The injury no.1 mentioned in column no.17 as chop injury is possible in case of assault by sharp and heavy weapon like an axe. Now I have shown the axe at article -P14. The injury no.1 as mentioned in column no.17 is possible by this axe at article – P14. The injury no.2 in column no.17 is possible in case of assault by sharp and heavy weapon. Now the witness has shown the weapon – Katti at article – P18. The witness replied that it was V shape injury, as such this injury by one blow by weapon Katti at article – P18 is not possible. He further added it required two blows by the same weapon at one place to have such V shape injury or this injury is possible in case of assault by two different weapons at one place.”

5. Even if the aforesaid medical evidence is accepted as it is, for the sake of argument, it is not in dispute that the name of PW 5 – Gangasagar Navnath Dange, who is examined as the eye witness to the incident of assault on the deceased, does not reflect in the F.I.R. The report was lodged by her father. It is true that the F.I.R. is not an encyclopedia, however admittedly the statement of PW 5 - Gangasagar Navnath Dange was recorded on the 7th day from the incident, though her evidence shows that she was present when

police had come to the crime scene. If she is to be believed, there would have been several injuries on the dead body. However, there were four (4) injuries. This prima facie falsifies the testimony of PW 5 - Gangasagar Navnath Dange. The blood stained clothes of the applicant and CDR's would be prima facie insufficient to maintain the conviction.

6. The applicant is behind the bars for a period little less than six years. The appeal may take its own time to come up for final hearing. In this view of the matter, we proceed to pass the following order :-

ORDER

- (I) Criminal Application is allowed.
- (II) The substantive sentence imposed by learned Additional Sessions Judge-2, Hingoli in Sessions Trial No.123/2019 by judgment and order dated 10th January, 2025 on the applicant is suspended during the pendency of appeal.
- (III) Applicant be released on bail on furnishing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only), with one surety in the like amount.
- (IV) Bail before the trial Court.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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