

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3930 OF 2024
IN
CRIMINAL APPEAL NO. 447 OF 2024

Abhimanyu Laxman Sasve

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. S.H. Salunke for the Applicant.

Mr. V.A.Kulkarni, APP for Respondent/State on 13.12.2024.

Mr. Shrikant Yadav, APP for the Respondent/State on 07.01.2025.

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CORAM : M.M. SATHAYE, J.

DATE : 7th JANUARY 2025

P.C. :

1. Learned Counsel for the Applicant and learned APP for Respondent/State were heard in detail on 13.12.2024 and the matter is placed today for passing order.

2. This is an application by the Applicant/Accused No.4 for suspension of sentence and for interim bail during pendency of appeal. By the impugned Judgment and Order dated 15.04.2024 passed in Sessions Case No. 153 of 2018 by the Additional Sessions Judge, Solapur, the Applicant is convicted for the offence punishable under Sections 307, 143, 147, 148 read with Section 149 of the Indian Penal Code (for short 'IPC') and is sentenced to suffer rigorous imprisonment of 10 years in addition to fine. The appeal is admitted recently on 25.04.2024 and is pending for final hearing.

3. The case of the prosecution in short is as under. That on 26.04.2017, informant PW-1 Suresh Sasve filed complaint alleging that on 23.04.2017 at about 5.30 p.m., the complainant, his wife Indubai, daughter-in-law Priyanka and grandchildren were having tea in front of their house, when their relatives - accused Ratnabai and Jagubai came and started abusing in filthy language. At that time, other accused also came there and accused Sanjay assaulted the complainant with sticks on his left rib. Scuffle ensued. The present Applicant-Accused No.4 Abhimanyu @ Abhiman assaulted on complainant's head by sword. When wife of complainant - Indubai came to rescue him, the accused assaulted on her right shoulder and chest. At that time, accused Ratnabai and Jagubai threw chilly powder on wife and daughter-in-law of the complainant. Hearing the chaos and quarrel, villagers came and accused went towards their home and, while going, they threatened to kill the complainant and his family, if complaint is filed.

4. This case is filed on the basis of FIR dated 26.04.2017. Admittedly, the present Applicant - Accused No. 4 has filed earlier FIR on 25.04.2017 at 19.05 bearing No. 181 of 2017 against the present complainant Suresh, his wife Indubai and daughter-in-law Priyanka along with other family members.

5. Learned Counsel for the Applicant submitted as under. That the Applicant and his family members are not the aggressors and in fact they were assaulted. That the motive for alleged use of sword and assault is not established. That the Applicant is acquitted from the offence punishable under Sections 504 and 506 of IPC which is about intentional insult with intent to provoke breach of the peace and criminal intimidation. That a new witness was examined in 2024 at the

end of the Trial namely Ujwala Sasave/PW-9, only as an attempt to establish motive. That eyewitness PW-5 Priyanka i.e. daughter-in-law of complainant Suresh, has admitted in cross-examination that present Applicant Abhiman has filed a case against her father-in-law and herself and others and she had no discussion with her husband Ankush about lodging of report. That the recovery of sword is not at the instance of the Applicant Abhiman. That Ankush, son of complainant Suresh, has stated in his evidence that at the time of incident, he was in his village and went home at about 8.30 p.m. while as PW-9 Ujwala has stated that Ankush was assaulted by Sanjay with a help of stick on his thigh. That therefore there is material contradiction, raising reasonable doubt. That according to the prosecution, the villagers had gathered after incident, however, none of the villagers is examined by the prosecution. That the Investigating Officer has admitted that the seizure punchnama does not mention any cloth with blood stains. That though sword is allegedly used by the Applicant, Arms Act is not invoked. That the Applicant and his family is falsely implicated in this case and this case is nothing but the counter blow to the earlier complainant filed by the Applicant. That under clause 16 of the operative part of the impugned Judgment and order, an inquiry is initiated against the Investigating Officer for keeping deliberate lacuna in the investigation and this itself is sufficient to give rise to reasonable doubt. That the injury suffered by the Applicant is not taken cognizance of. That Mr. Dhondiba, who is the person who took the injured to hospital, is not examined by the complainant and the Applicant has examined him as D.W.No.2. That the Applicant was on bail during trial and there is no instance of misuse of liberty. That the Applicant's family is dependent on him and therefore, he prayed for interim bail.

6. Learned APP for the Respondent/State submitted as under and opposed the application. That there are as many as 6 injured persons. He submitted that the weapon used is sword. That argument about inconsistency in evidence can be considered at the time of final hearing and this Court, while considering interim bail, should not re-appreciate or re-analyse the evidence. That the injuries to the complainant and his family members are established by the medical evidence including grievous injuries. That the allegations against the complainant are not proved and they are acquitted. That there is evidence suggesting that relationship between the parties are not good and there were disputes, therefore, motive is established. That minor variation in the version of witnesses are not fatal. That this is not a case of long incarceration and there are another criminal case (CR No. 407/2019 under Section 435, 143, 147 and 148) pending at Valsang Police Station against the Applicant.

7. I have considered the submissions and perused the documents.

8. Indeed, the Applicant is acquitted from the offence punishable under Section 504 and 506 which is about intentional insult to provoke the breach of the peace and criminal intimidation. If that be so, the aspect of provocation and criminal intimidation at the hand of Applicant is not to be considered. Admittedly, the Applicant had filed earlier FIR on 25.04.2017 and the same has resulted in registering CR No. 181 of 2017, against the complainant, in which case, the Court is informed that the complainants are acquitted. In the present case, the complaint is filed after 3 days and after FIR is registered by the Applicant against the complainant and his family members. The recovery of sword is not at the instance of the Applicant.

9. Learned Counsel for the Applicant has placed on record a certified copy (Exh. 98) which is medical certificate showing that Applicant has suffered Contused Lacerated Wound (CLW) admeasuring 6x2x1 cm on the right side of his head, though injury is stated to be simple injury. The said certificate indicates that the present Applicant was brought by the police with alleged history of assault at around 5 p.m. on 23.04.2017. According to the prosecution, the incident is of dated 23.04.2017 at around 5.30 p.m. and the assault has taken place for 30 minutes. Therefore, *prima facie* the Applicant was already taken by police for medical examination at 5.00 p.m. with history of assault. The judgment itself indicates, as can be seen from paragraph No.42 thereof, that the Investigating Officer had adopted casual approach and had not taken care of recording statements of all injured witnesses. It is further stated that the Investigating Officer has not taken medical certificates of all the injured witnesses and statements of few witnesses were recorded without obtaining medical certificates and chargesheet has been filed. On the basis of such clear observations, learned Sessions Judge has directed the concerned Superintendent of Police to conduct inquiry against the concerned the Investigating Officer.

10. *Prima facie*, at least at this stage, there is no clarity about motive for the alleged assault to the extent of using sword. Evidence of P.W.9 - Ujwala indicates that a new theory is sought to be introduced that Applicant Abhiman was driving tempo in speed when children were playing and when she shouted for driving tempo slowly, Abhiman went in speed. Such theory is not to be found either in complaint or subsequent statements of other witnesses.

11. From the over all reading of evidence and existence of cross

complaints and injury of both sides, in my view, this is a case of dispute between the relatives over some issue, resulting into injuries to both sides and at least at this stage, the alleged role of the Applicant seems to be arguable, especially given the fact that the investigation has not been found satisfactory by the Session Court.

12. Admittedly, the Applicant was on bail during pendency of trial and nothing is brought to the notice of the Court to indicate that the Applicant has misused the liberty. Though another case (CR No. 407 of 2019) is pending against the Applicant, the letter dated 13.12.2024 addressed by the concerned Police Station to the learned APP, which is placed on record, indicates that the Applicant is already on bail in connection with that crime.

13. The Applicant is 56 years old man. The Appeal is recently admitted and is not likely to be taken up shortly for final hearing.

14. Considering the overall facts and circumstances narrated above, I am inclined to grant bail. Hence, following order :

(i) Remainder of the Applicant's sentence under impugned Judgment and Order dated 15.04.2024 passed in Sessions Case No. 153 of 2018 by the Additional Sessions Judge, Solapur, is suspended.

(ii) The Applicant - Abhimanyu Laxman Sasve, be released on bail in connection with C.R.No.183/2017 of Valsang Police Station, Tal. Akkalkot, Dist. Solapur, on execution of PR. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(iii) The Applicant is directed not to contact or approach the complainant or his family members directly or indirectly. The Applicant is further directed not to enter the area of Aaherwadi, Taluka South Solapur, District – Solapur, where the Complainant and his family members are residing, during pendency of the Appeal.

(iv) The Applicant is directed to report to Valsang Police Station, District Solapur, on the first Monday in every two months, during pendency of the Appeal.

15. Interim Application is allowed in above terms.

(M.M. SATHAYE, J.)