

Rekha Patil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 682 OF 2025
IN
CRIMINAL APPEAL NO. 92 OF 2025**

1. Dharmendra Mahadev Waghmode ...Applicants
2. Ankush Mahadev Waghmode

Versus

The State of Maharashtra and Anr. ...Respondents

**Mr.Ritesh Thobde a/w Zubi Ansari, Changdev Shingade and
Darshan Rajpurohit, for the Applicants.
Ms. Kranti Hivrale, APP, for the Respondent No.1-State.
Mr. Shahaji T. Waghmode, for the Respondent No.2.**

**CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.**

DATED: 23rd JULY 2025.

PC:-

1. Heard learned Counsel Mr.Ritesh Thobde appearing for the applicants. Also heard Ms. Kranti Hivrale, the learned APP and Mr. Shahaji Waghmode, learned Counsel appearing on behalf the informant-respondent No.2.

2. The applicants, namely, Dharmendra Mahadev Waghmode and Ankush Mahadev Waghmode were the accused Nos. 2 and 3, in the Sessions Case No. 10 of 2022 before the Additional Sessions Judge, Malshiras. They were tried along with another accused viz. Kiran Mahadev Waghmode for the offences punishable under

Sections 307, 302, 323, 504, 506 and Section 34 of the Indian Penal Code (for short 'IPC').

3. The prosecution story is that, on 19th October, 2021, the accused persons had assaulted and fatally injured the deceased i.e. father of the complainant, leading to his death. An FIR was lodged by the son of the deceased on 20th October, 2021 with Natepute Police Station, based on which Crime No. 365 of 2021 was registered. According to the prosecution, the accused persons, in furtherance of their common intention, had assaulted the deceased with iron pipe, causing his death.

4. On conclusion of trial, by the judgment and order dated 15th January, 2022, both the applicants, along with the main accused Kiran Mahadev Waghmode, were convicted under Sections 302, 504 and 506 of the IPC with the assistance of section 34 of the IPC and each of them were *inter alia* sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.5,000/- for the offence punishable under Sections 302 r/w 34 of the IPC with default stipulation.

5. Assailing the judgment and order dated 15th January, 2022 passed in Special Case No. 10 of 2022, the applicants have jointly preferred Criminal Appeal No.92 of 2025, which is pending disposal before this Court. By filing the present application under Section 430 of Bhartiya Nagrik Suraksha Sanhita (for short

‘BNNS’), the two applicants have approached this Court seeking suspension of their jail sentence and for their release on bail.

6. After perusing the records, we find that the prosecution case is primarily based on the testimony of PW-1, who was examined as an eye witness to the occurrence. As per the testimony of PW-1, it is the accused No.1, who had assaulted the deceased with an iron pipe on the back of his head, which had resulted into grievous injury leading to his death. Insofar as the evidence against the present applicants i.e. the accused Nos. 2 and 3 are concerned, it appears from the testimony of PW-1 that they had merely threatened the deceased.

7. Mr. Thobde, learned Counsel for the applicants, submits that there is no cogent evidence on record to suggest involvement of the applicants in committing the offence under Section 302 of the IPC. He further submits that there is also nothing on record to show that there was meeting of minds and/or common intention between the accused persons to commit the murder of the deceased so as to invoke section 34 of the IPC.

8. The learned Counsel for the applicants has also submitted that there is significant improvement in the testimony of PW-1, insofar as the involvement of the present applicants is concerned and that is why, the learned trial Court has also not placed reliance on such testimony of PW-1 wherein it was stated that the accused

Nos. 2 and 3 i.e. the present applicants had a direct role in assisting the accused No.1 in assaulting the deceased.

9. Mr. Thobde has also invited our attention to the order dated 15th March, 2022 passed in Anticipatory Bail Application No. 116 of 2022, granting anticipatory bail to the two applicants during trial, to submit that his clients have not violated the conditions of the previous bail. It is also the submission of the learned Counsel for the applicants that his clients would abide by any condition imposed by this Court for granting bail.

10. Opposing the said submission, the learned APP has argued that there is sufficient evidence on record to indicate the involvement of the applicants in committing the offence punishable under Sections 302 of the IPC. Therefore, this application be rejected.

11. Mr. Waghmode, learned Counsel for the respondent No.2, has supported the submissions made by the learned APP. He has also added that since the dispute is pertaining to the ownership of land, there is every possibility of further escalation of violence if the applicants are released on bail.

12. After going through the material on record and upon considering the submissions advanced by learned Counsel for both the side, we find that the conviction of the accused persons is primarily based on the evidence of PW-1, who has ascribed a

specific role to the accused No.1 in assaulting the deceased. However, from the testimony of PW-1 i.e. in the eye witness to the occurrence, we find that there is considerable doubt as regards their involvement in committing the offence under Section 302 of the IPC. Although, the PW-1 has deposed that the accused No.2 and 3 had held the hand of the victim so as to enable the accused No.1 to strike a blow on the head of the deceased, yet, the said fact was not stated by the witness before the Investigating Officer. Therefore, it appears that there are material improvements in the testimony of the PW-1. That apart, from the medical evidence, we find that there is only one fatal injury on the deceased and the other two injuries, in all likelihood, had occurred due to falling of the victim on the ground on being assaulted by the main accused.

13. For the reasons stated herein, we find force in the submissions of the learned Counsel for the applicants that the present is a fit case for suspension of the jail sentence of the applicants and for their release on bail.

ORDER

(i) Applicant No. 1-Dharmendra Mahadev Waghmode and applicant No.2- Ankush Mahadev Waghmode shall be released on bail in connection with C.R. No. 365 of 2021 registered with Natepute Police Station, Tal. Malshiras, District-Solapur (Special Case No. 10 of 2022) on their executing P .R. bond of the sum of Rs.50,000/- each with one or two

sureties in like amount, to the satisfaction of the learned Trial Court, subject to fulfillment of the following further conditions:-

- (a) The applicants shall maintain good behaviour and shall not commit any offence or indulge in any anti social activities while on bail.
- (b) The applicants shall appear before the concerned Police Station (Natepute Police Station, Tal. Malshiras) on the first Saturday of every month between 3:00 p.m. to 5:00 p.m. and shall not leave the jurisdiction of the said police station without prior permission of the trial Court.
- (c) The applicants shall not threaten or interfere in any manner with the complainant or any of the witnesses connected with this case.

14. It is made clear that violation of the above conditions shall be viewed seriously.

15. The observations made herein-above are *prima-facie* in nature and have been made for the limited purpose of disposing of the bail application.

16. The application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)