

JPP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

**CRIMINAL APPLICATION NO. 44 OF 2015
IN
CRIMINAL APPEAL NO. 93 OF 2012**

Dhirajkumar Amarnath Giri. ... Applicant.

V/s.

The State of Maharashtra and Ors. ... Respondents.

Mr. Jehangir Minoo Khajotia for the Applicant.
Mrs. Sangeeta D. Shinde, APP for the State.

**CORAM : P.V. HARDAS &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

MARCH 25, 2015.

P.C. :-

By this Application the Applicant/Original Accused No.3 seeks suspension of the substantive sentence of imprisonment and his enlargement on bail pending the decision of this Appeal.

2. It appears that the Division Bench of this Court by an order dated 4th December 2012 passed in Criminal Application No.1535 of 2012 had released Original Accused No.4 Suraj Amarnath Giri on the ground that the name of

Original Accused No.4 Suraj was not referred to in the First Information Report, no overt-act was ascribed to Original Accused No.4 Suraj and test identification parade had not been held.

3. In the present case we find that the prosecution had examined PW-1 Shamu and PW-5 Ajay as eye witnesses to the incident. Admittedly, the First Information Report was lodged by PW-1 Shamu, who in the said report does not refer to the presence of the present Applicant i.e. Accused No.3 Dhirajkumar Amarnath Giri. Though overt-act is attributed by both PW-1 Shamu and PW-5 Ajay to Original Accused No.3 Dhirajkumar, we find that there is no reference to the name of the Applicant in the statement of PW-5 Ajay, recorded under Section 161 of the Code of Criminal Procedure. PW-5 Ajay had admitted in the cross-examination that after his first statement was recorded, the present Applicant was shown to him and thereafter, the name of the Applicant appears in the supplementary statement. The entire case against the Applicant therefore rests on the substantive identification in the Court.

4. In the light of the earlier order passed by the Division Bench of this Court to which we have adverted to above, in our opinion, the present Applicant is also entitled to be released on bail.

5. Consequently, this Application is allowed and the substantive sentence of imprisonment is suspended pending the decision of this Appeal. The Applicant be released on bail on his executing a PR Bond in the sum of Rs.25,000/- with one or two sureties in the like amount. The Applicant shall report to the Kalyan Bazar Peth Police Station once in three months i.e. on the First Saturday of the quarter between 8.00 a.m. to 9.00 a.m. Breach of this condition would entitle the Respondent - State to file an application for cancellation of bail.

Application is allowed as indicated above.

Copy duly authenticated be furnished to the parties to act upon.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)