

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**CRIMINAL APPLICATION NO.111 OF 2015  
IN  
CRIMINAL APPEAL NO.804 OF 2013**

Mr.Jamin Sharafat Khan      ...      **Applicant**  
V/s.  
The State of Maharashtra      ...      **Respondent**

.....

Mr.D.S.Manerkar, Advocate for the Applicant.  
Mrs.A.S.Pai, APP (Absent).  
Mr.K.V.Patil – API – Crime Branch, Unit 9.  
Ms.Anamika Malhotra, APP for the Respondent/State.

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**CORAM : ABHAY M. THIPSAY J.**

**DATED : 3RD MARCH 2015**

**P.C.**

1.            Heard Mr.Manerkar, the learned counsel for the applicant. Ms.Anamika Malhotra, the learned Additional Public Prosecutor states that Mrs.Pai. Additional Public Prosecutor appears in the matter for the State, and that, as she is absent, the matter may be adjourned. I find that on the last date also an adjournment was taken on the ground of inability of Mrs.Pai, Additional Public Prosecutor to appear in the matter. Under the circumstances, adjournment refused.

2. The applicant's appeal challenging his conviction and the sentence imposed upon him by the learned Ad-hoc Additional Sessions Judge, Shiwari, Mumbai has already been admitted.

3. The applicant had moved this Court for suspension of the sentence imposed upon him by the trial Court and for his release on bail during the pendency of the trial. The said application (Bail Application No.1038 of 2013) was rejected by a common order rejecting also the bail applications filed by two other co-accused in the same Sessions Case. By that order, liberty was granted to the applicant and even to the said other co-accused, 'to move a second bail application after one year'. Now the prayer for bail has been renewed, as more than a year has passed since then.

4. I have heard Mr.Manerkar, the learned counsel for the applicant. With his assistance, I have gone through the relevant parts of the impugned Judgment and the evidence of P.W.Nos. 1,4,10,11,16 and 19.

5. The applicant was not specifically named in the FIR. He is said to be the brother of one Altaf – a juvenile who has been named in the FIR. Undoubtedly, the applicant has been identified as one of the assailants by some of the eye witnesses during the trial, but no specific role has been attributed to him. His case,

therefore, can be treated little differently from that of the co-accused-Jayesh and Darshan, whose prayer for suspension of sentence was also rejected by the aforesaid common order dated January 8, 2014.

6. Considering all the relevant aspects of the matter, and keeping in mind the manner in which the incident commenced, I am of the opinion that the learned counsel for the applicant has been able to raise arguable points, which would need serious consideration at the time of final hearing of the appeal.

7. The applicant is in custody for more than one and half year. He had not suffered any conviction previously and is not said to be involved in criminal cases prior to this one. In the ordinary course, the appeal is not likely to be taken up for final hearing within a short time. The applicant was on bail during the trial.

8. Considering all the relevant aspects of the matter, I am inclined to suspend the substantive sentence imposed upon the applicant/appellant, subject to certain conditions.

9. The application is allowed.

10. Pending the hearing and final disposal of the appeal the substantive sentence imposed upon the applicant shall stand suspended; and the applicant shall be released on bail in the sum of Rs.50,000/-, with one surety in like amount, on the condition

that the applicant shall report to the trial Court on the first Monday of every calender month, till the disposal of appeal.

11. Should the Court be closed on any given Monday, the applicant shall report to the trial Court on the next working day.

12. The application is disposed of in the aforesaid terms.

**(ABHAY M. THIPSAY J.)**