

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1200 OF 2015

IN

CRIMINAL APPEAL NO.87 of 2013

Nitin Pradeep Khairnar

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr. Tushar Sonawane, Advocate for the applicant.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 20th OCTOBER 2015

P.C. :

1 The applicant is one of the accused in Sessions Case No.9 of 2010 tried by the Addl. Sessions Judge, Nasik. The applicant and two others (accused no.1 Mushir Sayyed and Accused no.2 Bhushan Bachhav) were convicted by the learned Addl. Sessions Judge of an offence punishable under Section 307 of the IPC, and were sentenced to suffer Rigorous Imprisonment (RI) for a period of 7(seven) years each and pay a fine of Rs.3,000/- each with a default sentence.

2 The Appeal filed by the applicant, challenging his conviction and the sentence imposed upon him, has been

admitted. By this application, the applicant prays that pending the hearing and final disposal of the Appeal, the substantive sentence imposed upon him, be suspended and that, he be released on bail.

3 It is not in dispute that the applicant has remained in custody for a period of 3 years and 2 months.

4 The co-accused Bhushan Bachhav (accused no.2) has also filed an Appeal which is pending before this Court. He had also applied for suspension of the sentence imposed upon him, which application has been allowed by me by an order dated 4th September 2015. (Criminal Application No.552/15 in Criminal Appeal No.65/13).

5 The case of the prosecution is that there were three persons who came to assault the victim Mushir Sayyed. These three persons, according to the prosecution, had come on a motor-cycle. The prosecution case is that two of those persons went near Mushir Sayyed, and these persons who had arms with them, assaulted Mushir Sayyed and ran away. The third one who was on motor-cycle was attempting to run away by starting the motor-cycle but he fell down and was apprehended on the spot. That person was handed over to the police, and his name was mentioned in the First Information Report. According to the prosecution case, the person who was apprehended on the spot, was not the actual assailant and that he was the one who had accompanied the other two, who were the actual assailants.

6 The name of the person who was apprehended on the spot was given in the First Information Report as 'Bhushan Bachhav' i.e. the Accused no.2. In the evidence, however, the victim suggested that Bhushan Bachhav was one of the actual assailants. He, however, did not state as to who, in that case, was the one who was apprehended on the spot.

7 It appears that there arises some confusion about the identity of the accused persons particularly with regard to who were the actual assailants. The benefit of such confusion was given to the co-accused – Bhushan Bachhav by suspending his conviction. Because of the confusion in the evidence in that regard, similar benefit should be given to the present applicant also.

8 No weapon was recovered from, or at the instance of the applicant. The learned counsel for the applicant states that the applicant was not involved in any case previously.

9 Considering all the relevant aspects of the matter, including the fact that the applicant has already undergone a sentence of more than three years, and that in the ordinary course, the Appeal is not likely to be taken up for final hearing within a short time, I am inclined to allow the application.

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.30,000/- with one surety in like amount, or two sureties in

the sum of Rs.15,000/- each, on the condition that he shall report to the trial Court on the first Monday of every calendar month till the disposal of the Appeal.

11 Should the Court be closed on any given Monday on account of a holiday, the applicant shall report to the Court on the next working day.

12 Any failure on the part of the applicant to report to the trial Court, as aforesaid, shall forthwith be brought to the notice of this Court by the trial Court for further appropriate action.

13 Application is disposed of accordingly.

(ABHAY M. THIPSAY, J)

CERTIFICATE

***Certified to be true and correct copy of the original signed
Judgment/Order.***