

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.622 OF 2016
IN
CRIMINAL APPEAL NO.465 OF 2016

Machhinda Haridas Sakhare

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Abhaykumar Apte, advocate appointed for the Applicant
Mr.H.J. Dedia, APP, Respondent - State

**CORAM: SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: AUGUST 2, 2016

ORAL ORDER (PER MRS.MRIDULA BHATKAR, J.):

1. The applicant-accused is convicted for the offence punishable under section 302 r/w section 34 of the Indian Penal Code by judgment and order dated 23.4.2015 in Sessions Case No.1070 of 2009 for life imprisonment. So he has filed the present appeal against the order of conviction and has moved this application for bail pending appeal.

2. The learned Counsel has submitted that there is no consistent evidence of the eye witnesses on the point of identification of the accused. The accused is not an assailant and the evidence tendered by the prosecution witnesses is not reliable and cogent. The applicant-accused be therefore released on bail.

3. Learned Prosecutor has opposed this application.
4. The applicant-accused is the original accused No.3 in the trial. The incident of assaulting the deceased Rahul Gaikwad has taken place on 15.8.2009 on the night of 15.8.2009 outside the hotel Samrat on the Nashik highway road near Moshi village. On that night, the applicant alongwith accused No.1 had food in the hotel and there was a quarrel between the accused and the waiter. Thereafter, they left the hotel and again, after some time, the applicant-accused alongwith the juvenile accused went to the spot armed with weapons and accused No.3 gave blow of sharp edged weapon on the head of the deceased. Perused the evidence of PW1 Navnath Gavare and PW4 Nikhil Gaikwad. They both heard shouts of the deceased and they went there. When they went outside the hotel, they saw the accused assaulting the deceased on his head with weapon and also saw him running away. The deceased died due to the head injury.
5. In view of the evidence of the eye witnesses, we are not inclined to grant bail. Hence the application is rejected.
6. Fees to be paid to the appointed Counsel are quantified at Rs.2,500/-.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)