

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.114 OF 2017
IN
CRIMINAL APPEAL NO.596 OF 2016**

Yuvraj Sarjerao Salve)...Applicant

V/s.
State Of Maharashtra)...Respondent

Mr. Kedar Patil, Advocate for the Applicant.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th MARCH, 2017.

P.C. :

This is an application for suspension of sentence and releasing the applicant-original accused no.6 on bail during the pendency of the appeal filed by him.

2 The applicant-accused has been convicted of the offence punishable under Section 120-B of the IPC along with some of the co-accused and he has been sentenced to suffer RI for 7 years for the same apart from payment of fine of Rs.2,000/- and in default to undergo further RI for 5 months.

3 Heard the learned advocate appearing for the applicant-accused.

4 By drawing my attention to the evidence of P.W.5-Irfan Sayyad and P.W.7-Ayyaj Ahmed, the learned advocate argued that evidence of both these witnesses so also evidence of P.W.20-Lajam Allauddin is disbelieved by the learned trial Court. He further argued that evidence of approver who was examined as P.W.40-Suyash @ Maruti Muluk also came to be disbelieved as such merely because two rounds are stated to have been recovered from him, he cannot be convicted under Section 120-B of IPC without there being any evidence regarding criminal conspiracy. He further argued that on the principle of parity, the applicant-original accused no.6 is entitled to bail as original accused nos.7 and 9 from whom motor-cycle and Maruti car allegedly used in the crime in question were recovered are released on bail by this Court.

5 The learned APP opposed the application by contending that P.W.5-Irfan Sayyad has spoken about presence of the applicant-original accused no.6 at the spot of incident and two

bullets were recovered from him.

6 I have carefully considered the rival submissions and also perused the impugned judgment and order of conviction apart from deposition of witnesses. It is the case of the prosecution that Salim Shaikh along with his friend P.W.-7-Ayyaj Ahmed and P.W.20-Lajam Allauddin had been to the Court at Karad for attending the date of hearing of the case. When they came out of the Court, 5 accused persons committed the crime in question. It is the case of the prosecution that those accused persons fired bullets causing injury to Salim Shaikh as well as other persons viz. P.W.3-Prashant and P.W.4-Mahadev. Injured Salim Shaikh has not been examined by the prosecution during trial and the impugned judgment and order shows that there is no plausible reason for non-examining injured Salim Shaikh. It is also seen that P.W.3-Prashant and P.W.4-Mahadev have turned hostile to the prosecution. The learned trial Court disbelieved the evidence of P.W.5-Irfan Sayyad and P.W.7-Ayyaj Ahmed. Apart from P.W.12-Omkar, P.W.16-Yogesh Pawar has deposed about recovery of two rounds at the instance of present applicant. The question will be

whether this evidence is sufficient to conclude that the applicant-original accused no.6 had conspired with other accused persons for eliminating injured Salim Shaikh. Considering the quality and nature of evidence available on record against the present applicant-original accused no.6, I am of the considered opinion that he cannot be denied liberty during the pendency of appeal filed by him as it will take its own time for hearing.

7 The Original Accused nos.7 and 9 against whom evidence of similar quality is available are already released on bail by this Court vide order dated 14.12.2016 in Criminal Application No.1209 of 2016 with reasons which can be found in paragraph 5 of that order, which is annexed to the instant application at Exhibit 'D'. Hence, the order:

(1) The application is allowed.

(2) Substantive sentence of imprisonment imposed on the applicant-original accused no.6 is suspended and he is released on bail on executing PR Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

(3) As condition of this order, the applicant-original accused no.6 should attend the trial Court on first Monday of every alternate month between 11 a.m. to 12 noon from April, 2017 pending the hearing and disposal of the appeal. He should also inform place of his residence and cell phone number as well as changes therein from time to time to the trial Court as well as concerned police station, in writing.

(4) Application is disposed of accordingly.

(A. M. BADAR, J.)