

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.156 OF 2017
in
CRIMINAL APPEAL NO.82 OF 2017

Imran Ayub Shaikh	 Applicant
V/s.	
The State of Maharashtra	 Respondent

Ms.Anjali Patil forApplicant.
Mr.P.H.Gaikwad Patil APP for State.

CORAM : A.M.BADAR, J.
DATE : 14 FEBRUARY 2017

P.C.

1. This is an application for suspension of sentence and releasing the Applicant/accused on bail during the pendency of the Appeal filed by him.

2. Heard the learned Advocate for the Appellant/accused no.1. She argued that out of 5 years sentence, the Applicant/accused has undergone sentence of about 4 years and 8 months and now only

four months sentence has remained to be undergone by the Applicant/accused. She further argued that the eye-witness has attributed the role of assaulting the deceased by the Applicant by a sword on left knee but that evidence has come on record by way of omission. The learned Advocate further argued that though four accused persons were put on trial except the Applicant all other were acquitted by the learned trial Court by disbelieving evidence of the prosecution.

3. The APP has opposed the Application by stating that there are eye-witnesses to the incident in question.

4. I have carefully considered the rival submissions and also perused the record made available. The accusation that accused persons had formed unlawful assembly and indulged in rioting armed with deadly weapons and murdered Imtiaz in furtherance of common object of unlawful assembly. They were put to trial for several offences including one punishable under section 302 read with 149 of

the Indian Penal Code. The learned trial Court after appreciating the evidence on record was pleased to acquit all the accused persons for the offences alleged against them but, convicted the present Applicant/accused no.1 of the offence punishable under section 304 part II of the Indian Penal Code. He is sentenced to suffer R.I.for 5 years apart from payment of fine of Rs.1,00,000/-. A perusal of the evidence of the eye witness PW 12-Mohammed Shafi Abdul Latif Shaikh who is the brother-in-law of the deceased shows that his version of the Applicant had assaulted the deceased on the left knee by a sword has come on record by way of omission. By the same set of evidence, other accused persons are acquitted by the trial Court. The ultimate sentence is of 5 years duration. The Applicant/ accused is behind bars from 5 June 2012. He has almost undergone the entire sentence imposed against him. It is seen that the Applicant/ accused has already deposited fine of Rs.1,00,000/-.His Appeal is already admitted for final hearing.

5. Considering the nature of the evidence against him and

the short sentence imposed against him out of which a substantive part of the sentence is already undergone by him, I do not find any reason to refuse bail to the Applicant. Hence the following order:

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed on the Applicant is suspended and he is directed to be released on bail on his furnishing a personal bond of Rs.15,000/- (Rupees Fifteen thousand) and furnishing surety in the like amount.
- (iii) The Applicant is permitted to furnish cash surety of Rs.15000/- for his release on bail for a period of two weeks from today.

(A.M.BADAR, J)