

Pravin Sheshdhar Mishra @ Sachin ...Applicant
Versus
The State of Maharashtra ...Respondent

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 6th APRIL, 2017.

P.C.:-

By this application the Applicant has sought suspension of sentence imposed in Sessions Case No.436 of 2011 and enlargement on bail pending the decision of the Appeal.

2. Heard Mr. Gupte, the learned senior counsel for the Applicant and Ms Gadhvi, APP for the Respondent-State.

3. By the impugned judgment and order dated 12th May, 2016 the Applicant alongwith accused No.4 was convicted for offences punishable under Sections 302 read with 34 of the Indian Penal Code, Section 25 (1-B) of the Arms Act and under Section 37 read with

Section 135 of the Bombay Police Act and sentenced to suffer R.I. for one year each and to pay fine of Rs.10,000/- each i.d. to suffer further R.I. for 1 month each.

4. The accusations against the Applicant are that on 8th February, 2011 at about 3.00 p.m. the Applicant alongwith the original accused No.4 went to the office of one Manish Dholakia. They enquired with PW1-Receptionist whether Manish Dholakia is in the office. The PW1-Receptionist asked the present Applicant and the accused No.4 to be seated. The Applicant and the accused No.4 did not sit and PW1-Receptionist saw Pistol in the back pocket of one of the accused. She raised alarm and thereafter these persons started running. They were chased by the security guards. PW2 tried to catch hold of one of the accused i.e. the Applicant herein but the Applicant herein fired gun shot at security guard-Ajit Yerunkar. Ajit Yerunkar was taken to the hospital, where he was declared as dead.

5. The prosecution relied upon the evidence of PW1, PW2 and PW3 and the memorandum of Test Identification Parade and evidence of PW29-Narayan Kulkarni, Tahsildar, who conducted the Test Identification Parade. The testimony of PW1 reveals that two persons had entered the office. One of the persons had a pistol and when she

raised an alarm they ran away from the office. The testimony of PW2 reveals that he and the deceased had followed said two persons. The testimony of PW2 further reveals that while he tried to catch hold of the other person, the Applicant fired the gun at the security guard. These witnesses have identified the present Applicant and the accused No.4 in the identification parade held by PW29-Narayan Kulkarni, Tahasildar as well as in the Court.

6. Mr. Gupte, the learned senior counsel for the Applicant submits that PW29-Narayan Kulkarni, Tahasildar has not followed the procedure while conducting the Test Identification Parade and that it would not be safe to rely upon the identification in the Court. From the deposition of the PW1 and PW2 it reveals that they had enough time to see the accused and therefore could identify the accused in the test identification parade as well as in the Court.

7. This identification of the Applicant by these witnesses cannot be discarded at this stage. Considering the facts and circumstances, we are, not inclined to grant bail. Hence, the Application is rejected.

8. Since the Applicant is in custody since 2011 we grant leave to him to apply for expeditious hearing of the Appeal after six months.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)