

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1033 OF 2017
IN
CRIMINAL APPEAL NO.556 OF 2015

Dashrath Pandurang MaliApplicant/Appellant
V/s.
The State of MaharashtraRespondents

Mr. Ritesh Thobde with Mr. Sagar Tambe, Advocates for
Applicant/Appellant.
Mr.A.R.Kapadnis, APP for the Respondent-State.
Mr. A.B.Kadam, Advocate for Complainant.

**CORAM :- RANJEET MORE &
SANDEEP K. SHINDE, JJ.**

DATE :- 7TH DECEMBER, 2017.

PC. :-

Heard the learned counsel appearing for the respective parties.

2 The Applicant (Original Accused No.3) along with his parents (Original Accused Nos.1 and 2) were tried for the offences punishable under Sections 302, 504, 506 read with Section 34 of the IPC. The learned Additional Sessions Judge, Malshiras by the judgment and order dated 24.4.2015 convicted the Applicant for the offence punishable under Section 302 of IPC and sentenced him to

suffer rigorous imprisonment for life and to pay fine of Rs.25,000/-, in default to suffer further rigorous imprisonment for two years. So far as the Original Accused Nos.1 and 2 are concerned, they were convicted for the offence punishable under Section 323 of the IPC and were sentenced to suffer simple imprisonment for six months and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for two months. Original Accused Nos.2 and 3 have filed separate Appeals, which are admitted. They have already been released on bail.

3 The present applicant has filed aforesaid separate Appeal which is already admitted. The present Application is filed for bail pending final disposal of the above Appeal. We have gone through the impugned judgment and order as well as depositions. Record reveals that the incident in question took place on 14.11.2012 at 8.40 a.m. At that time, the deceased Tukaram was coming from his land and was proceeding towards his Vasti. At that time, Original Accused Nos.1 and 2 started quarreling with the deceased Tukaram. Original Accused No.2 was seen holding the collar of the deceased Tukaram and Original Accused No.1 was seen holding the hands of the deceased Tukaram. At that time, the present Applicant came running from Vasti of one Pandurang. He

took stone from road and hit on left back side of the head of the deceased Tukaram. Deceased Tukaram fell down on the ground. Later, he was shifted to the hospital where he died on the same day. This incident was witnessed by two eye witnesses.

4 On perusal of the evidence of these two eye witnesses, we, prima-facie, find that there was no pre-mediated intention either on the part of the present Applicant or on part of the Original Accused Nos.1 and 2 to cause death of Tukaram. It is clear that none of the accused was carrying any sort of weapon in their hands and the present Applicant came at the scene of offence at later stage. The present Applicant is alleged to have hit the deceased Tukaram by stone on the left back side of the head.

5 The Applicant was arrested on 14.11.2012 and is still in custody for more than five years. Taking totality of the facts into consideration, we are of the opinion that the Applicant deserves to be released on bail during the pendency of the Appeal. We, accordingly, dispose of this Application by passing the following order:

(1) The Applicant is directed to be released on bail on executing PR Bond in the sum of Rs.10,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court on conditions that he

shall remain present at the time of final hearing of the Appeal and he shall pay fine of Rs.25,000/- if not paid earlier.

(SANDEEP K. SHINDE, J.)

(RANJEET MORE, J.)