

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.1475 OF 2016
IN
CRIMINAL APPEAL NO.788 OF 2016**

Rajesh Prakash Punjabi ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.S.V.Marwadi with Mr.Kartik S. Garg, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent/State.

....

CORAM : A. M. BADAR J.

DATED : 9th JANUARY 2017.

P.C . :

1 This is an application for suspension of sentence and releasing the applicant on bail during pendency of the appeal.

2 By the impugned Judgment and Order dated 29/8/2016, the applicant/accused came to be convicted for the offence punishable under Section 307 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.20,000/- in default to undergo further rigorous imprisonment for two months. It is seen that during the pendency of the trial the applicant/accused was under-trial prisoner.

3 Heard the learned counsel appearing for the applicant/accused. By taking me through the evidence of injured P.W.No.2 Avinash Shukla, the learned counsel argued that the injured and the applicant/accused were friends. The police statement of the injured came to be recorded on 22/12/2014 though the crime in question took place on 28/10/2014. By taking me through the evidence of P.W.No.5 Dr.Kavita Bangera, Medical Officer of Municipal Hospital, it is argued that this witness has not stated that the injured was not in a position to give his statement. Evidence of the Medical Officer shows that the injured was conscious when he was taken to the hospital. The learned counsel further argued that though there were two persons on the spot, according to the prosecution case, the conviction is based on sole testimony of the injured witness. It is further argued that injured P.W.No.2 Avinash Shukla had made several improvements in his version before the Court and, therefore, his evidence is doubtful. Injuries were not sufficient in ordinary course of nature to cause death.

4 As against this, the learned Additional Public Prosecutor opposed the application by contending that evidence of the injured is reliable and the same is corroborated by recovery of a weapon at his instance and the medical evidence on record.

5 I have carefully considered the rival submissions and also perused copies of depositions placed on record. The incident in question took place on 28/10/2014. Initially, there was a booze session at the house of applicant/accused whereat the applicant/accused and injured P.W.No.2 consumed liquor and there was wordy exchange between them for return of Rs.12,000/- to injured P.W.No.2 Avinash Shukla by the applicant/accused. Then injured P.W.No.2 Avinash and P.W.No.3 Vishal indulged in a booze session in the open land in the vicinity of the house of applicant/accused. The applicant/accused is stated to have joined them at that place and then again there were abuses hurled by the applicant/accused at the injured witness. Then, according to the prosecution, the applicant/accused brought a knife from his house and stabbed the injured witness four to five times.

6 Evidence of the injured witness shows that because of assault he became unconscious and was taken to the hospital.

7 P.W.No.5 Dr.Kavita Medical officer of Municipal Hospital treated the injured. She stated that the injured had given history of assault by knife by one person and her evidence revealed that this patient was conscious oriented, general poor. It is seen from the evidence of Dr.Kavita as well as injury certificate at Exh.26 that P.W.No.2 Avinash Shukla has suffered five stab/incise wounds. One stab injury was on left side of the chest

measuring 3 x 1 x 1 cm., the another was on sternum measuring 1 x 1 x 0.5 cm. The injury on right axilla was measuring 0.5 x 1 x 1 cm. apart from two incised wounds on right arm and left wrist respectively.

8 Presence of injured witness on the spot of the incident cannot be doubted. He is a stamped witness. The case at hand is the case of single accused and single victim. Therefore, it cannot be said that the injured would name some innocent and will spare the real culprit. Non-recording of statement of the injured witness immediately by police cannot cause doubt in version of the injured witness because for lapses on the part of the investigator the victim of the crime cannot be held responsible.

9 Be that as it is may, considering the nature of injury suffered by the victim *prima facie* it cannot be said that the assault was not with an intention to commit murder of P.W.No.2 Avinash. Weapon of offence and successive blows *prima facie* reflects the intention. The applicant/accused was not on bail during trial. Considering the extensive damage caused to P.W.No.2 Avinash Shukla because of at least five blows of knife and keeping in mind the nature of offence and quality of evidence, I am of the opinion that this is not a fit case to release the applicant/accused on bail during the pendency of appeal. The application is, therefore, rejected.

10 The hearing of the appeal is expedited as the application for suspension of sentence is rejected. The observations made in this order are *prima facie* in nature and shall not have bearing on disposal of the appeal.

(A. M. BADAR J.)