

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION 1642 OF 2017
IN
CRIMINAL APPEAL NO. 1001 OF 2017**

Pradip Harishchandra Gharat
Versus

....Applicant

The State of Maharashtra

....Respondent

Mrs. Bhakti Deshpande for the applicant.
Mr. H.J. Dedhia, APP for the State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 08th DECEMBER, 2017***

P.C. :

1. The applicant herein was an accused in Sessions Case No.57 of 2012 on the file of Additional Sessions Judge, Kalyan. By this application, the applicant herein has sought to release him on bail.
2. By judgment dated 28th September, 2017, the applicant has been convicted for offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.60,000/- in default to undergo further rigorous imprisonment for six months. Out of the said fine amount, Rs.50,000/- is ordered to be paid to the injured by way of compensation. Being aggrieved by the said conviction and sentence, the applicant has preferred this appeal.
3. Heard the learned counsel for the applicant and the learned APP

for the State. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

4. Mrs. Bhakti Deshpande, learned counsel for the applicant has submitted that the applicant is in custody since 28th September, 2017. She further submits that the applicant is a poor person and was unable to arrange the fine amount. She submits that the applicant will deposit the fine amount within two months in four equal installments and that the first installment would be deposited before the trial court i.e. the Additional Sessions Judge, Kalyan within 15 days from the date of uploading of this order. The statement is accepted.

5. The learned counsel for the applicant further submits that the evidence on record *prima facie* indicates that the applicant had inflicted a single blow. She submits that the evidence on record does not *prima facie* bring home the guilt under section 307 of the Indian Penal Code. She, therefore, contends that the applicant has an arguable case on merits and that the applicant therefore be released on bail pending hearing of the appeal.

6. Mr. H.J. Dedhia, learned APP for the State has submitted that the evidence of PW7-Ramesh Patil, Investigating Officer indicates that the injuries inflicted were of serious nature. The victim was admitted in the hospital for 12 days. The injury was sufficient to cause death of the victim. He submits that the applicant and the victim are residing in the same locality and considering the facts and circumstances, this is not a fit case for releasing the applicant on bail.

7. It is the case of the prosecution that the applicant had attempted to commit murder of PW2-Raju Joglekar. The testimony of PW2 *prima facie* reveals that on 22nd November, 2011 at about 08:45 p.m. to 09:00 p.m., while he was proceeding on motorcycle with his wife, he had received a phone call from some unknown person. The said person had asked him to come near Phadke Maidan. He went to the said place. The applicant came near him and stabbed him with a knife. The medical evidence also *prima facie* reveals that the applicant had sustained grievous injuries and was admitted in the hospital. The material on record *prima facie* shows the involvement of the applicant in commission of the said crime.

8. Furthermore, the applicant has been sentenced to undergo for a short term imprisonment of five years. The appeal is of the year 2017 and is not likely to come up for final hearing in the next couple of years due to large pendency of old cases. Hence, rejection of the application will result in the applicant undergoing the sentence of imprisonment even before the appeal is heard on merits.

9. The applicant was on bail during the pendency of the Special Sessions Case No.57 of 2012. There is nothing on record to indicate that the applicant has violated the terms and conditions of the order.

10. Considering the aforesaid facts and also considering the fact that the applicant had inflicted a single blow, in my considered view, this is a fit case to suspend the execution of sentence and to release the

applicant on bail pending the disposal of the appeal on merits. Hence, the order :-

- (i) The Criminal Application No.1642 of 2017 is allowed.
- (ii) The execution of sentence imposed in Sessions Case No.57 of 2012 vide judgment dated 28th September, 2017 is suspended till disposal of the appeal on merits, subject to the applicant furnishing fresh bail bond of Rs.50,000/- (Rupees Fifty Thousand) with one or two solvent sureties in the like amount, to the satisfaction of Additional Sessions Judge, Kalyan.
- (iii) The applicant shall deposit the first installment of fine amount before the trial court i.e. the Additional Sessions Judge, Kalyan within 15 days from the date of uploading of this order and thereafter, deposit the remaining fine amount as stated above.
- (iv). The applicant shall not interfere with the victim in any manner.
- (v). The applicant shall furnish his permanent as well as temporary address and his contact number and shall intimate change of address and contact number, if any, to the Investigating Officer, as well as to the concerned Court.
- (vi). The applicant shall be released from jail provided he is not in custody in any other crime or case.

(SMT. ANUJA PRABHUDESSAI, J.)