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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 72 OF 2018
IN
CRIMINAL APPEAL NO. 1075 OF 2017

Somling Hanmant Birajdar Applicant.
Versus
State of Maharashtra Respondent.

Mr. Ritesh Thobde, Advocate for the Applicant a/w Mr. Sagar Tambe
for the Applicant.

Mrs M.M. Deshmukh, APP for Respondent/State.

CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.

DATE: 8TH JUNE, 2018

P.C.:-

1] This is an application for suspension of sentence and grant of bail during pendency of appeal.

2] Applicant, along with other accused, has been convicted for the offence punishable under Sections 143, 147, 148, 302 read with Section 149 of the Indian Penal Code and sentenced to suffer imprisonment for life.

3] The perusal of material placed on record, would reveal that on

the same day i.e. on 26/03/2010, original Accused No.1 in the present case viz. Rajkumar was assaulted by the first informant Mahasidha. It appears that, in the counter incident which was taken place at around 11.00 A.M., Sidhanna, father of the first informant Mahasidha, was assaulted by accused in the present crime. Sidhanna succumbed to the said injuries. The original accused were charged with by the said offence. However, the learned Trial Judge only convicted the present applicant alongwith accused No.3 – Nigonda Birajdar, Accused No.5 – Shrimant Chokhande and accused No.6 – Avdhut Birajdar for the said offence and acquitted other accused.

4] Perusal of the judgment and order passed by the learned Trial Judge would reveal that accused No.1 – Rajkumar has been acquitted on the ground that, he had received serious injuries in the incident which had taken place on 26/3/2010. However, it is pertinent to note that insofar as present applicant is concerned, Investigating Officer – Dattatraya Nighot Dy. S.P in his cross-examination has clearly admitted thus:-

“It is correct that on 26/3/2010 itself at about 10.30 a.m. in Jangalgi village in front of Maruti temple accused No.1 Rajkumar was assaulted by complainant Mahasiddha and others as per report lodged by Rajkumar. In said complaint there were also allegations that mother of Rajkumar was beaten and her ornaments were snatched. Report now shown to me is same. It is at Exh. 121 (produced by defence). I investigated said crime also. During investigation of said crime it was

revealed that accused Somling was assaulted by Mahasiddha and others and chopped his both hands by Koyata and Sattur at village Jadar Bablad. In said crime I obtained medical certificates of both Somling and Rajkumar and produced those certificates in charge-sheet filed against Mahasiddha and others.”

It could be seen that the Investigating Officer has clearly admitted that, both the hands of the present applicant were chopped by the complainant in the present case with the use of Koyata and Sattur.

5] It could thus be seen that, injuries which are sustained by the present applicant in the incident which is alleged to have occurred on 26/3/2010 at 10.30 A.M are of much serious nature than that of the injuries which were sustained by accused No.1 – Rajkumar. Atleast, prima faice, present applicant is entitled to be treated on parity with accused No.1. In any case, at this stage, we are only considering prima facie case for considering the application for suspension of sentence and grant of bail.

6] In the light of aforesaid discussion, we are of the considered view that the Application deserves to be allowed. It is further to be noted that, the Applicant was on bail during trial and it is not the case of prosecution that he has misused his liberty when he was on bail.

7] In the result, the following order is passed:-

ORDER

Application is allowed. The order of sentence is suspended and the Applicant is directed to be released on bail on the same terms and conditions as were applicable during trial. However, Applicant shall furnish fresh bonds.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)