

Amk

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

**CRIMINAL APPLICATION NO. 189 OF 2018
IN
CRIMINAL APPEAL NO. 588 OF 2016**

Sagar Ananda Chavan	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

Mr. Kedar Patil a/w. Mr. Vikramsingh Parmar, Mr. Chirag Sonecha for the Applicant.

Mrs. M. M. Deshmukh, APP for the Respondent-State.

**CORAM : INDRAJIT MAHANTY AND
V. K. JADHAV, JJ.**

DATE : 20th DECEMBER, 2018.

P. C.

1. Pending the hearing and final disposal of Appeal No. 588 of 2016 preferred against the Judgment and order of conviction dated 08.07.2006 passed by the District Judge-1 and Additional Sessions Judge, Sangli in Sessions Case No.246 of 2013, the Applicant-original accused No.1 has preferred this Application for getting released on bail and also for suspension of substantiate part of the sentence passed against him.

2. Learned Counsel for the Applicant submits that, admittedly, Applicant-accused No.1 was not present at the time of alleged commission of crime. Applicant-accused No.1 had stated to his mother that in case if the deceased does not disclose the name of her paramour, she would pour

kerosene on her person, set her on fire and he would see the consequences. By saying so, Applicant-accused No.1 went to his job place. The learned Counsel submits that the trial Court has convicted Applicant-accused No.1 with the aid of Section 34, which in the given set of allegations, would be inapplicable.

3. Learned APP has strongly resisted the Application on the ground that the intention of the Applicant-accused is material and by saying so Applicant-accused No.1 was intending that his wife deceased Mrs. Jyoti should be killed, if she will not disclose the name of her paramour.

4. So far as the applicability of Section 34 is concerned, the physical presence of the accused at the spot is not *sine quo non*. However, it is well settled that some active participation, especially, in crime involving any physical violence is necessary under Section 34 of the Indian Penal Code. We refer to the case of **Virendra Singh Vs. State of Madhya Pradesh, (2010) 8 SCC 407** wherein the Supreme Court has held that liability under Section 34 can arise only when two conditions stand fulfilled i.e. (1) mental element or intention to commit criminal act conjointly with another or others; and (2) actual participation in one form or the other in commission of the crime. In the instant case, we do not find any active participation of the Applicant-accused No.1 in the actual crime.

5. In view of the above, we are inclined to grant the bail and pass the following order:

ORDER

- (i) The Criminal Application is hereby allowed.
- (ii) The Applicant-accused No.1-Sagar Ananda Chavan be released on bail on furnishing P. R. bond of Rs.20,000/- with one solvent surety in the like amount.
- (iii) The substantive part of the sentence passed against Applicant-accused No.1 in Sessions Case No. 246 of 2013 is hereby suspended till the disposal of the Appeal.
- (iv) The Criminal Application is, accordingly, disposed of.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]