

Rajesh @ Rajya Shankar Rathod.	]	... Applicant / Orig.Accd.No.1
Versus		
State of Maharashtra.	]	... Respondent

Mr. Abhijeet Desai i/b Ms. Vrushali Maindad for Applicant.
Mr. H. J. Dedhia, APP for State.

**CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.**
DATE :- 25 JUNE, 2018

P. C. :-

1. This is an application for grant of bail and suspension of sentence during the pendency of the Appeal.
2. Mr. H. J. Dedhia, learned APP for State, has vehemently opposed the Application.

3. In view of the law laid down by the Apex Court in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others¹, a detailed elaboration of evidence will have to be avoided.

4. It is the prosecution case that when the deceased was sleeping under a Su-babool tree in the farm, four persons came there. One of them lifted stone and assaulted the deceased on his forehead.

5. The star prosecution witness is PW 5 Preetam Pawar. Undisputedly, the accused were unknown to the said witness. Though the said witness has identified the accused, he has stated in the examination-in-chief itself that in the police station when the police had shown him drawing of a person from the computer, he identified the same to be similar to one of the accused persons. Apart from that, he states that when he went to the identification parade, prior to conducting the identification parade, the accused were shown to him in the police station.

¹ (1980) 2 SCC 559

6. The said witness has been declared to be a hostile witness. It will be relevant to refer to the material brought on record in his cross-examination by the prosecution.

“.....It is not true to day that accused were not shown to me 2-3 days prior to identification parade at police chowky, but I am giving false evidence to help the accused. It is not true to say that I have seen accused Rajesh Rathod hitting with stone and I identify him and I know him, but giving false evidence to help him.”

Apart from that, conduct of the said witness also appears to be somewhat unnatural. After he went home, his parents were not at home. He thereafter went to see an orchestra in the village and after witnessing the orchestra, he informed his mother. However, the information given to the police is only on the next day.

7. In that view of the matter, the Applicant has, *prima facie*, made out the case. Hence, the order.

ORDER

- (i) The Application is allowed.
- (ii) The order of sentence is suspended.

- (iii) The Applicant be released on bail on furnishing bail bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)