

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

**CRIMINAL APPLICATION NO.283 OF 2018
IN
CRIMINAL APPEAL NO.658 OF 2017**

Allabaksh Gafur Shaikh	 Applicant
versus	
The State of Maharashtra	... Respondent
.....	

- Mr.Ganesh Gole a/w Mr.Ateet Shirodkar, Advocate for the Applicant.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.**
DATE : 15th JUNE, 2018.

P.C. :

1. The Applicant has approached this Court praying for suspension of conviction and grant of bail during the pendency of the Appeal.
2. The learned Counsel Mr.Ganesh Gole on behalf of the Applicant submitted that the conviction is only on the basis of a Dying Declaration. He submitted that the perusal of the said Dying Declaration reveals that the same is not trustworthy, nor reliable. He submitted that the conviction on the basis of such Dying Declaration would not be sustainable.

3. In view of the law led down in *Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others* reported in *(1980) 2 SCC 559*, the Apex Court has held that the detailed elaboration of evidence should be avoided at the stage of grant of bail.
4. The perusal of the Judgment of the learned Trial Judge reveal that the learned Trial Judge while recording the Judgment and Order of conviction has relied on the Dying Declaration and also the provisions of the section 106 of the Indian Evidence Act.
5. The detail scrutiny as to whether the Dying Declaration is trustworthy and reliable, so as to raise the conviction on the basis of the same, can only be done at the stage of final hearing of the Appeal.
6. In that view of the matter, we are not inclined to consider the prayer made in the Application. The Application is therefore rejected.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)