

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.362 OF 2017

IN

CRIMINAL APPEAL NO.91 OF 2017

Akash Mukesh Shelar ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Satyavrat Joshi, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 19th APRIL 2018.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him.

2 The applicant/accused came to be convicted of the offences punishable under Section 304 Part (I) as well as Section 324 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment for ten years on first count and on second count for one year rigorous imprisonment apart from imposition of some fine and default sentence.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the sole eye-witness to the prosecution case has turned hostile and evidence of P.W.No.7 Nilesh and P.W.No.8 Sameer is not satisfying the yardstick of truthful witness. In submission of the learned Advocate for the applicant/accused, evidence of P.W.No.7 Nilesh to the effect that he apprehended the applicant/accused in the river-bed has come on record by way of omission, whereas evidence of P.W.No.8 Sameer shows that he reached on the spot after arrival of the Ambulance and then initially, the mob was dispersed and thereafter search of the accused was undertaken. The learned Advocate further argued that during pendency of the trial, the applicant was on bail and thereafter also he has undergone one year jail sentence by now. Hence, he is entitled for bail.

4 The learned Additional Public Prosecutor opposed the application by submitting that P.W.No.4 Reshma had disclosed the incident to her brother P.W.No.1 Laxmikant, who has supported the case of prosecution. Similarly, the applicant/accused was apprehended soon after the incident by P.W.No.7 Nilesh and P.W.No.8 Sameer. Therefore, he is not entitled for bail.

5 I have carefully considered the rival submissions and also perused the record made available.

6 According to the prosecution case, the applicant/accused is brother of P.W.No.4 Reshma Shelar. The prosecution case is to the effect that Reshma, who is a married woman had extra-marital relations with Vishal Bhise (since deceased). The incident took place on 19/12/2014 at about 8.30 p.m. Initially, P.W.No.4 Reshma and Vishal Bhise (since deceased) repeatedly called applicant Akash for dinner. However, the applicant used to disconnect those calls apart from abusing Vishal and Reshma. Hence, Vishal Bhise (since deceased) took P.W.No.2 Reshma to the Juice Center of the applicant located near Suryananda Lawns and forced applicant Akash to join them for dinner. This led to altercations and, subsequently, scuffle between them. In the course of that scuffle, the applicant is stated to have assaulted Vishal Bhise by means of three inches knife kept in his juice center.

7 Considering the prosecution evidence, the learned trial Court concluded that the incident is fallout of heat of passion in a sudden fight and most of the injuries except one were muscle deep. That is how the applicant is convicted of the offence punishable under Section 304 Part I of the IPC.

8 P.W.No.4 Reshma, who is examined as an eye-witness to the incident turned hostile and the learned trial Court believed the circumstantial evidence adduced by the prosecution. One of

the circumstance was apprehending the applicant in the nearby river-bed soon after the incident. For this purpose, evidence of P.W.No.7 Nilesh and P.W.No.8 Sameer, who were police constables came to be relied upon. *Prima facie*, it is seen that evidence of P.W.No.7 Nilesh regarding apprehending the applicant while he was running in the river-bed, has come on record by way of omission. Though he claimed that clothes of the applicant were stained with blood, those clothes were not shown to this witness, when he was in the witness box. So far as P.W.No.8 Sameer is concerned the applicant was not shown to him for the purpose of identification when P.W.No.8 Sameer was in the witness box. That apart, P.W.No.8 Sameer has claimed to have rushed to the spot after being informed by one person. His evidence shows that when he reached the spot, the Ambulance had already arrived there. He dispersed the mob present on the spot. Naturally, he must have searched for the accused thereafter. But, still he claimed that he found the applicant in the river-bed by chasing him along with his colleague. At the time of final disposal of the appeal, these aspects will have to be considered while appreciating testimony of both these witnesses.

9 Suffice to say that during pendency of the appeal, the applicant was on bail and he has not misused his liberty. His conviction for the offence punishable under Section 304 Part (I) of the IPC is based purely on circumstantial evidence as the sole eye-

witness examined by the prosecution has turned hostile. In this situation, in my considered opinion liberty needs to be restored to the applicant till disposal of the appeal and, therefore, the Order :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to released on bail on his executing P. R. Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) The application is disposed of accordingly.
- (iv) Copy of this Order be send to the applicant, who is reported to be undergoing sentence in Yerwada Central Prison.

(A.M.BADAR J.)