

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.483 OF 2017

IN

CRIMINAL APPEAL NO.263 OF 2017

Sanjay Ramesh Kharat ... **Applicant**

V/s.

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

.....

Mr.Nitin Sejpai, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 12th JUNE 2018.

P.C. :

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

2 The applicant along with the co-accused is convicted of the offence punishable under Section 304 Part II read with Section 34 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years.

3 According to the prosecution case, Bhagwan Bhikaji Gode along with three accused persons roamed throughout the

day on 26/11/2013 and in night hours indulged in booze session in the open place. After consuming liquor, the applicant/accused Sanjay pushed Bhagwan causing his fall. His limbs were held by the present applicant as well as co-accused Sainath and another accused Surender hit a stone on head of Bhagwan causing injuries to him.

4 The incident was informed to police and P.W.No.1 Prabhuling, Police Constable carried Bhagwan to the hospital. On the way to the hospital, Bhagwan gave oral dying declaration to P.W.No.1 Prabhuling implicating three accused in the crime in question. During the course of his hospitalization, on 14/12/2013 deceased Bhagwan gave written dying declaration in his own handwriting to P.W.No.17 Annasaheb Sonur, the Investigating Officer. Ultimately, Bhagwan succumbed to the injuries on 21/12/2013.

5 The applicant/accused though acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal code, is convicted for the offence punishable under Section 304 Part II read with Section 34 of the Indian Penal Code.

6 Heard the learned Advocate appearing for the applicant/accused. He argued that statement of P.W.No.5 Shobha Jogdand and P.W.No.7 Soni Ghode are recorded belatedly that is

on 11/12/2013 and 14/12/2013 though the incident in question took place on 26/11/2013. The learned Advocate took me through the evidence of P.W.No.17 Annasaheb Sonur, the Investigating Officer in order to demonstrate that this delay in recording the statements of material witnesses is fatal to the prosecution case. My attention is drawn to written dying declaration (Exhibit 49) as well as to paragraph 66 of the impugned judgment to demonstrate that this dying declaration was discarded by the learned trial Court rightly. With this, the learned Advocate argued that out of ten years of rigorous imprisonment imposed on the present applicant, he has undergone jail sentence of more than four and half years and therefore, considering the nature of evidence available against the present applicant as well as the fact that he has undergone about half of the sentence imposed on him, he be released on bail.

7 The learned Additional Public Prosecutor opposed the application by contending that apart from oral dying declaration there is written dying declaration implicating the applicant/accused in crime in question which is not held to be proved by the learned trial Court. The learned Additional Public Prosecutor drew my attention to the evidence of P.W.No.8 Jairam Shetty, owner of the liquor shop to show that the dying declarations of deceased Bhagwan are duly corroborated in material particulars by the independent evidence adduced by the prosecution.

8 I have carefully considered the rival submission and also perused copies of depositions of prosecution witnesses as well as the impugned Judgment and Order of conviction and resultant sentence.

9 Delay in recording statement of witness affects the veracity of prosecution case when it is pointed out that the Investigator was knowing who were material witnesses, but keeps away those witnesses deliberately in order to decide what shape is required to be given to the prosecution case and then examines those witnesses later in point of time in order to bolster up the prosecution case. In the case in hand, no doubt statement of P.W.No.5 Shobha Jogdand and P.W.No.7 Soni Ghode are recorded on 11/12/2013 and 14/12/2013, but from cross examination of P.W.No.17 Annasaheb Sonur, it is elicited that at the time of recording statements of these witnesses he came to know that they are material witnesses.

10 As Bhagwan (since deceased) was unable to speak, his dying declaration came to be recorded by giving writing material to him and that is how the dying declaration at Exhibit 49 came to be recorded in presence of P.W.No.17 Annasaheb Sonur and P.W.No.7 Soni Ghode. That has been discarded by the learned trial Court by recording a finding that there was delay in obtaining necessary endorsement of Medical Officer on that

statement which was recorded in presence of relatives of the victim. *Prima facie*, it is seen that the learned trial Court missed the law laid down by the Full Bench of this Court in ***Ramesh Gyanoba Kamble v. State of Maharashtra***.¹

11 Be that as it may, out of ten years rigorous imprisonment imposed on the applicant, he has already undergone four and half years of sentence. The appeal filed by him is of the years 2014. Considering the pendency of appeals before this Court, the appeal filed by the present applicant may not be heard in near future. As the applicant has already undergone near about half of the sentence imposed on him by the learned trial Court, I am of the considered opinion that he needs to be released on bail during pendency of the appeal filed by him. Therefore, the Order :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed on the applicant is suspended and he is directed to be released on bail on his executing P. R. Bond in the sum of Rs.15,000/- and on furnishing one surety in the like amount.
- (iii) The application is accordingly disposed of.

(A.M.BADAR J.)

¹ 2011 ALL MR (Cri.) 3536 (FB)