

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.879 OF 2018

IN

CRIMINAL APPEAL NO.1302 OF 2013

Shabana Samir Shaikh.] ... Applicant /
Orig. Accd. No.2

Versus

State of Maharashtra.] ... Respondent

Dr. Yug M. Chaudhry a/w Ms. Payushi Roy for Applicant.
Mr. V. V. Gangurde, APP for State.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE :- 19 JUNE, 2018

P. C. :-

1. This is an application for grant of bail and for suspension of sentence during the pendency of the Appeal.

2. The Applicant is the accused no.2 and convicted for the offence punishable under Sections 302 read with Section 34 and under Section 120B of the IPC for committing the murder of one Sohail Sayyed.

3. The Application is vehemently opposed by the learned APP on the ground that the conviction of the accused is based on cogent evidence.

4. The earlier Application of the Applicant was dismissed as withdrawn vide Order dated 26/03/2014 with liberty to apply afresh in the event the Appeal was not heard within a period of three months from the said date.

5. The case is based on circumstantial evidence. The circumstances which the learned trial Judge has found incriminating against the present Applicant, are the evidence of PW 2 Majhar Ali Sayyed on last seen and finding of a hair clip on the spot.

6. A perusal of the evidence of PW 12 reveals that he had seen the deceased going in one direction and thereafter both the accused followed after about 5 minutes. Insofar as the hair clip is concerned, there is no material shown to come to the finding that the said hair clip belonged to the present Applicant.

7. A perusal of the material on record further reveals that though the incident has taken place on 22/08/2008, the present Applicant has been arrested on 24/03/2009. In the meantime, the Investigating Officers changed twice. The evidence of PW 29 and PW 23 who are the first and second Investigating Officers, would reveal that they have admitted that they did not arrest the present Applicant till no material was found against her.

8. The Applicant was on bail during trial. It is not the prosecution case that she has misused her liberty. The Applicant is behind the bars for the last 4.½ years after her conviction.

9. In this view of the matter, we are inclined to allow the Application. Hence, the order.

ORDER

- (i) The Application is allowed.
- (ii) The Order of conviction and sentence is suspended.
- (iii) The Applicant is directed to be released on bail on the same terms and conditions as were applicable during trial, but on furnishing fresh bond.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)