

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.882 OF 2018

IN

CRIMINAL APPEAL NO.790 OF 2018

Saifraja Shabir Bhavnagiri.	]	... Applicant/Applicant
Versus		(Orig. Accd. No.1)
The State of Maharashtra.	]	... Respondent

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

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.

DATE :- 29 JUNE, 2018

P. C. :-

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

2. By the impugned Judgment dated 22/01/2018, the Applicant is convicted for the offences punishable under Sections 302, 394 and 452 read with 34 of the IPC. The Appellant is in custody since 13/06/2013. He, along with a co-accused, is alleged to have committed murder of one Aarti @ Nalini Chainani and is alleged to have committed robbery of her ornaments and cash amount. The main circumstances against him are :

- (a) he was seen near the building of the deceased on the fateful day,
- (b) the recovery of jewellery at his instance and
- (c) recovery of a razor blade which is alleged to be a murder weapon.

Insofar as the circumstance of the Applicant having been seen near the building is concerned, the prosecution has examined PW 10 Rameshkumar Pal who was the Watchman of the building. This witness was not knowing the accused personally but had seen him in the building on a few occasions. On the day of the incident i.e. on 11/06/2013, this witness had seen two persons returning at about 5.00 p.m. with a bag. According to the prosecution, these persons were the accused and they were returning after committing robbery and after committing murder of the deceased. PW 10 was made to identify the suspects in a Test Identification Parade. This witness has categorically admitted that those two accused were shown to him by the police at Bandra Police Station and he was also shown their photographs. The cross-examination reveals that the police had tortured this witness and had assaulted him with a belt. Apart from him, other security guards were also tortured by the police.

Therefore, at this stage, there is sufficient doubt about the veracity of his evidence since he was pressurized by the police and since the accused were shown to him.

3. The prosecution has examined PW 20 Naresh Lalwani who was a family friend of the deceased. In the cross-examination, he has admitted that the jewellery was already kept on a table on 13/06/2013 when he had gone to the police station at 9.00 a.m. He was there at the police station till 2.00 p.m. According to the prosecution, the jewellery was recovered at the instance of the present Applicant on 13/06/2013 pursuant to the statement given by him after 1.15 p.m. on that day. The prosecution has examined PW 9 Yasin Shaikh who was a pancha for the said recovery. He has admitted that police had shown the articles to him and the other pancha which the police were carrying to the flat before effecting the recovery. He has further admitted that those articles were the same which he had identified before the Court. Thus, at this stage, sufficient doubt is raised on behalf of the Applicant to show that this recovery of jewellery may not be genuine.

4. The alleged murder weapon i.e. a razor was recovered from an open space. Therefore, even that recovery appears to be doubtful.

5. In view of these glaring infirmities in the prosecution case, we are inclined to allow the Application. Hence, the following order.

ORDER

- (i) The Application is allowed.
- (ii) The sentence awarded to the Applicant is suspended, pending final hearing of the present Appeal.
- (iii) The Applicant is directed to be released on bail on his executing a P.R. bond in the sum of of Rs.15,000/- with one or two sureties in the like amount.
- (iv) The Applicant shall report to Bandra police station every alternate Monday between 10.00 a.m. to 12.00 p.m. till final disposal of the present Appeal.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)