

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.964 OF 2017
IN
CRIMINAL APPEAL NO.680 OF 2016

Mohammad Nasim Mohammad Rafiq Khan,
Age 29 years, Occ.Business, R/o.Bhartiy Kamla
Nagar, Hanuman Mandir Galli, Sangam Nagar,
Antop Hill, Wadala, Mumbai-400 037.

Applicant

versus

The State of Maharashtra

Respondents

Ms.Anjali Patil for applicant.

Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th June 2018

PC :

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted for offences under Section 304(1) of Indian Penal Code vide judgment and order dated 27th September 2016. The applicant is also convicted for the offences under Sections 143 and 147 of Indian Penal Code and Section 27 of Indian Arms Act. For the offence u/s 304(1) of IPC, the applicant is sentenced to suffer rigorous imprisonment for ten years and also to pay fine of Rs.10,000/-. For the offences u/s.143 and 147 of IPC, he is sentenced to suffer rigorous imprisonment for six months and two years respectively, whereas, for offence u/s 27 of Indian Arms Act, he is sentenced to suffer rigorous imprisonment for three years and also to pay fine of Rs.1,000/-

2. The prosecution case is that on 15th April 2013, at about 4.00 a.m; the brother of complainant was assaulted by the accused. They

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were armed with dangerous weapons. The accused no.1 stabbed the victim on his chest and other parts of body. The applicant assaulted the victim by bamboo stick. Other accused assaulted the victim on his head by sword. Others assaulted the victim by fist blows and kicks. The prosecution case is that the accused were involved in extortion activities and they were demanding money from the complainant and the deceased. The brother of the complainant sustained injuries and he was declared dead. The offences were registered u/s 143, 144, 146, 148, 149, 386, 302, 506(2) of Indian Penal Code and under Sections 4 and 27 of Indian Arms Act.

3. The applicant has challenged the aforesaid judgment by preferring an appeal before this Court, which has been admitted. Learned counsel for applicant pointed out the evidence of witnesses on record and submitted that evidence suffers from serious infirmities. There are major contradictions and omissions in the evidence. The witnesses have attributed different role to the applicant in their substantive evidence. It is further submitted that the applicant was on bail during trial. The applicant is in custody from 27th September 2016 after judgment of conviction.

4. Learned APP submitted that presence of the applicant is established through evidence on record. The witnesses have attributed overt act to the applicant. There are minor contradictions which do not vitiate the conviction. The applicant was involved in assaulting the deceased along with other accused. It is therefore prayed that the application be rejected.

5. On perusal of the evidence of the witnesses which is placed on

record, it appears that there are several omission in the evidence. While registering the case, the prosecution has attributed the role to the applicant of having assaulted the victim by bamboo stick. PW-1 (complainant) has stated in the evidence that applicant had assaulted the deceased by sword. The witness also stated that the applicant was also holding bamboo stick. From the evidence of the said witness it appears that in the examination-in-chief at one place it is mentioned that the applicant was holding sword in his hand and gave blows on legs and neck of the deceased and at a latter part of his evidence he stated that bamboo stick was in the hands of applicant and thereafter in the hands of another accused Guddu. He again stated that sword was in the hands of applicant. He also deposed that he did not remember whether he had told police that the applicant was holding a sword in his hand and cannot assign any reason as to why this fact was not mentioned in the police statement. He further stated that he does not recall whether he has told police that applicant had inflicted blow by sword on the person of deceased and could not give any reason as to why said fact is not reflected in his statement. From the evidence of PW-2 it appears that he is another eye witness to the incident. He deposed that he does not recall the name of person who was assaulting by sword. In his cross-examination he stated that while recording his statement before police he had stated that applicant was holding the sword in his hand but the said fact is not reflected in his statement. Whereas, PW-3 has stated in the evidence that faces of the accused were covered by handkerchief. PW-4 i.e. wife of the deceased has stated that the applicant was holding sword and co-accused was holding bamboo. Whereas, in the cross-examination, she stated that she had stated before police that she saw accused and that one of the accused

was holding the knife in his hand, but cannot assign any reasons for not mentioning these facts in her statement.

6. The appeal preferred by the applicant is pending and this is not the stage to appreciate the evidence in detail. During pendency of the trial this Court had granted bail to the applicant vide order dated 28th November 2013 considering the role assigned to the applicant. Taking into consideration the aforesaid facts, case for suspension of sentence and grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Pending hearing and final disposal of Criminal Appeal No.680 of 2016, the applicant is directed to be released on bail on executing PR bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (ii) After being released on bail, the applicant shall attend the concerned Police Station once in a month on every first Saturday of every month between 11 a.m. and 12 noon till further orders;
- (iii) Criminal Application No.964 of 2017 is allowed in above terms.

(PRAKASH D. NAIK, J.)

MST