

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.1046 OF 2018
IN
APPEAL NO.275 OF 2016

Bharat Balasaheb Ghasghase .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. Hrishikesh Mundargi I/b. Shreyansh R. Mihare for applicant
Mrs. M.H.Mhatre, APP for State.

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

DATE : 8th August 2018.

P.C.

This is an application for bail and for suspension of sentence during the pendency of appeal filed by the original accused No.1. It is prosecution's case that 9 accused had hatched a conspiracy to do away with the deceased and in furtherance of that conspiracy, accused Nos. 1 and 2 have assaulted the deceased.

2] In view of the law laid down by the Apex Court in the

case of Niranjan Singh and Anr. Vs. Prabhakar Rajaram Kharote reported in **[(1980) 2 S.C.C. 559]** a detailed elaboration of evidence at this stage will have to be avoided. Learned APP vehemently opposes this application.

3] A perusal of the material placed on record would reveal that prosecution initially relied upon the evidence of P.W.19 – Deepak Shinde who is said to be an eye witness. However, he has turned hostile and not supported the case of prosecution. The other evidence on which the prosecution relied upon is the oral dying declaration given to P.W.-12, Rajaram Keshav Kadam, Police Head Constable. However, perusal of the evidence of the Medical Expert, P.W.-22, Dr. Laxman Shivaji Pol would show that considering the injuries mentioned in column 20 and 21, death might have occurred instantly. In any case, the oral dying declaration is very weak type of evidence and it is not safe to rest the order of conviction on the basis of such piece of evidence, without there being any corroboration. In that view of the matter, we find that the applicant has a good prima facie case. The applicant is behind bars for more than six years.

4] In that view of the matter, the application is allowed. The order of sentence is suspended. The applicant is directed to be released on bail on applicant's furnishing bail bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

(SARANG V.KOTWAL, J)

(B.R.GAVAI, J.)

Yogeshwar
Bhalchandra
Gokhale

Digitally signed by Yogeshwar
Bhalchandra Gokhale
Date: 2018.08.08 21:50:22 -
0400