

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1058 OF 2018
IN
CRIMINAL APPEAL NO.852 OF 2018**

Pappu @ Bharat Mahadeo Durge Applicant

versus

State of Maharashtra ... Respondent

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- Mr.Satyavrat Joshi, Advocate for the Applicant.
- Mrs.M.H. Mhatre, APP for the State/Respondent.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 17th JULY, 2018.**

P.C. :

1. This is an Application for grant of bail and suspension of sentence during the pendency of the Appeal.
2. Heard the learned Counsel Mr.Satyavrat Joshi for the Appellant. The learned APP for the State.
3. It is the prosecution case that when the deceased and

the accused were travelling in the Auto Rickshaw of P.W.1 Somnath Shankar Thakar, the Appellant had assaulted the deceased, a lady. After the incident the Auto Rikshaw was brought to the police station. From the police station, along with police escort, the deceased was brought to the hospital, where she was declared to be dead. Mr.Satyavrat Joshi, the learned Counsel for the Appellant, submitted that since P.W.1 the first informant himself has turned hostile, there is no evidence worth and prays to suspend the order of conviction against the Appellant.

4. No doubt that the first informant has turned hostile. However, at this stage, in view of the law laid down in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559, it is held that the detailed elaboration of evidence should be avoided at the stage of grant of bail.
5. The perusal of material placed on record would reveal

that P.W.1, the first informant, had lodged the FIR, wherein he had clearly named the present Appellant. His statement under Section 164 was also recorded, wherein he has implicated the present Applicant. The P.W.1 has changed his version thrice. In the cross-examination by the learned APP. He has clearly admitted that he has implicated the present Applicant in the statement recorded u/s 164 of Cr.P.C. In view of the law laid down in the case of *State of U.P. Vs. Brahma Das, reported in (1986) 4 Supreme Court Cases 93*, the part of the testimony of the hostile witness, which is found to be credible, can always be taken into consideration.

6. Apart from that, it is to be noted that the present Applicant had surrendered himself before the police station. No doubt that any incriminating statement made by the Applicant could not be read in the evidence. However, his conduct of surrendering himself to the police station, can very well be taken into consideration in view of section 8 of the Indian Evidence Act.

7. In that view of the matter, we do not find that the case is made out for grant of bail. The Application is therefore rejected.
8. The aforesaid observations are made by us for considering the Application for bail and would not be taken into consideration at the stage of final hearing of the Appeal.
9. We further clarify that in the event the Appeal is not heard for a period of three years from today, the Applicant would be entitled to apply afresh.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)