

Vidya Amin.

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

**CRIMINAL APPLICATION NO. 1105 OF 2018
IN
CRIMINAL APPEAL NO. 769 OF 2018**

Mukesh Kushalpal Sharma @
Kabir Hussain Noor Islam Suleman Sardar ... Applicant
VS.
The State of Maharashtra ... Respondent

Mr. A. Karim Pathan i/b. A. Kalam Shaikh, Advocate for the applicant.

Mr. J.P. Yagnik, APP for the respondent/State.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 7th September, 2018**

P.C. :

1. This Application is moved by the applicant-accused for bail and suspension of sentence in Appeal, which is directed against the judgment and order dated 4th August, 2017 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi thereby convicting the applicant/accused for the offences punishable under section 302 of Indian Penal Code in which he is sentenced to suffer imprisonment for life and pay fine of Rs.5,000/-, i/d. to suffer S.I. for six months.

2. The incident of murder of Angara Aaitu Pujari has taken

place on 19th March, 2011 in shop no. 19, Harish Enterprises at Goregaon. The deceased earlier had received phone calls from the gang of gangster Hemant Pujary demanding amount of Rs.50 lakhs as ransom and threats of life was given to him. Angara Pujari has reported the incident to the Crime Branch and offence was registered at C.R. No. 74 of 2010 for extortion under sections 387 and 120B of the Indian Penal Code on 26th February, 2010. On 19th March, 2011, when Angara Pujari was in the shop, at around 11.30 a.m. the applicant/accused entered the shop, ate some snacks and paid bill for the same. He then went out and again returned to the shop and went to the deceased who was at counter. He talked with him and took out the pistol and shot him. PW-1, son of the deceased and other witnesses started shouting. The applicant-accused ran out of the shop. The vendors in the vicinity and the witnesses caught him with the help of the police on the spot and a pistol was recovered from him. Since then, the applicant/accused is in prison. He was charged under section 3, 25, 27 of the Indian Arms Act and so also under section 385, 386, 387 r/w. 120B of the Indian Penal Code and also under section 37(1)(a), Section 135 of Maharashtra Police Act. However, he was released from all these offences and was held guilty simpliciter

under section 302 of the Indian Penal Code.

3. The learned counsel for the applicant/accused, while arguing this Application, has highlighted this point of acquittal of the applicant-accused from other offences and has submitted that as the offence of conspiracy is not proved against the applicant/accused, the prosecution failed to establish the motive. The applicant/accused is falsely implicated in the present case. He has come from Delhi and is searching for a job in Mumbai happened to be in City Centre Mall. Due to starvation he fell down and at that time, he was arrested. He submitted that there is discrepancy in the reporting of offence by the witness and wireless message of the police, which are brought on record. There is variation in the timing of arrest of the applicant/accused. The evidence of the prosecution is not reliable and the fact of arrest is not established satisfactorily by the prosecution. The learned counsel has further submitted that the witness saw the accused for the first time and so it was necessary on the part of the police to conduct Test Identification Parade. He has further submitted that there is discrepancy in the timing of arrest so also timing of the incident and the place of apprehension of the applicant/accused.

He further submitted that the applicant/accused has not made any Bail Application when he was before the trial Court. This is the first Bail Application and therefore, the applicant be granted bail. He submitted that the applicant/accused is in prison since 2011 and he has undergone sentence for a period of 7 years. He is to be granted bail. In support of his submissions, the learned counsel relied on the judgment of **Surinder Singh @ Shingara Singh vs. State of Punjab, reported in 2005 SCC (Cri) 1674.**

4. Learned APP, while opposing this Bail Application, has submitted that there are four eye witnesses. He relied on the evidence of informant PW-1 Arun Angara Pujari and employees, i.e., PW-2 Dinanath Mendon, PW-6 Pradip Parkar and PW-7 Uday Baburao Wanjole. Learned APP submitted that the applicant fired at the deceased at 11.30 a.m. in the shop and he was caught immediately when he was running away and fell down due to intervention of PW-10 Suresh. Learned APP pointed out that PW-10 who was a vendor in the vicinity threw wooden stick to the applicant when he was running and due to that impact, he fell down and then caught along with the weapon. In fact the applicant/accused was caught red-handed. Learned APP

submitted that there is arrest panchnama and there was no need of Test Identification Parade, as the applicant-accused was in the shop for a considerable time. He bought some eatables, ate it, gave money and went away. Then he again came. PW-1, who is son of the deceased and the other eye witnesses, who were employees in the shop, had sufficient opportunity to see the applicant-accused and he was caught immediately, so Test Identification Parade was not taken.

5. We have considered the submissions of learned counsel for the applicant-accused and learned APP. We have perused the evidence of witnesses.

6. In the case of **Surinder Singh @ Shingara Singh** (*supra*), the Supreme Court has referred to the guidelines laid down in the case of **Dharmapal vs. State of Haryana, reported in 2000 (1) C.R.L. 74**. The Supreme Court has observed that the guidelines laid down in the case should not be understood to have laid down an invariable rule to be observed with mathematical precision. The Supreme Court pointed out the observation in the case of **Dharmapal** that "Difficulties may arise if such a direction is treated as an invariable rule in the matter of grant of discretionary

relief. The rule laid down in Dharampals case may be inferentially understood to mean that unless a convict has undergone five years imprisonment, he should not be released on bail". Those guidelines are to be kept in mind by the Courts dealing with Application for grant of bail in pending Appeal.

7. At this stage, we give weightage to the chronology of the evidence and the manner in which the incident has taken place and the accused was arrested. At this stage, we are of the opinion that it is not a fit case to grant bail. Application for bail is rejected.

8. It is true that the present applicant/accused is languishing in prison since 2011 and his trial is concluded in the year 2017 against which Appeal is filed in 2018. In view of the period undergone by the applicant/accused, we would like to give priority to this Appeal and it is not to be taken up as per the sequence of the pendency of the Appeals. The Appeal is expedited and it is to be taken along with Appeals of the year 2011 or 2012.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)