

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

**CRIMINAL APPLICATION NO.144 OF 2018
IN
CRIMINAL APPEAL NO.88 OF 2018
WITH
CRIMINAL APPLICATION NO.1217 OF 2018
IN
CRIMINAL APPLICATION NO.144 OF 2018**

Balaram Govind Mhaskar Applicant

versus

The State of Maharashtra ... Respondent

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- Mr.Shirish Gupte, Senior Counsel i/b. Mr.R.S. Kate, Advocate for the Applicant in APPA No.144/18.
- Mr.Pawan Mali, Advocate for the Applicant in APPA No. 1217/18 (for Intervener).
- Mr.V.V. Gangurde, APP for the State/Respondent.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 06th AUGUST, 2018.**

P.C. :

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

2. Heard learned Senior Counsel Mr.Shirish Gupte for the Applicant, the learned APP Mr.V.V. Gangurde for the State and the learned Counsel Mr.Pawan Mali for the Intervener.
3. The Applicant has been convicted for the offence punishable u/s 302 of IPC and was sentenced to suffer life imprisonment for the said offence. The Applicant was also convicted for the offence punishable u/s 324 of IPC.
4. In view of law laid down in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559, 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 even according to P.W.1 Girisj Joshi, he had gone to the house of the Appellant so as to seek explanation from the son of the Applicant, as to why he has given dash to their vehicle. As per his version when quarrel was going on between him (P.W.1)

on one hand and the son and wife of the Applicant on the other, the deceased Vishwas Mhaskar came in the house of the Applicant. Thereafter the Applicant came home and in the said fight started assaulting the first informant. On the first informant questioning the Applicant about his conduct, he took out the revolver from his waist and shot on the head of Vishwas Mhaskar.

6. As such prima facie we do not find that it can be said that there was premeditation to commit the murder of the deceased. The possibility of applicant losing his control on account of quarrel and there being a grave and sudden provocation from the first informant, he committing crime cannot be ruled out. The Applicant has examined himself as D.W.1 and taken a defence of self defence.

7. The learned APP Mr.V.V. Gangurde, for the State vehemently opposed the Application on the ground that the Applicant has criminal antecedents.

8. Insofar as the contention of the learned APP with regard to the criminal antecedents is concerned, Mr.Gupte the learned Senior Counsel on the instructions makes a categorical statement that the case in which the Applicant was involved, the Applicant has already been acquitted.
9. The another circumstance which weighs in granting bail is that the Applicant is 72 years old and has already undergone a bypass surgery.
10. At least prima facie, the conviction u/s 302 of IPC may not be tenable and will have to be brought under Part I or Part II of section 302 of IPC. The Applicant has already suffered custody for more than 7 years. In that view of the matter, we are inclined to allow the Application on stringent conditions.
11. The Application is allowed. The Applicant is directed to be released on bail, on his furnishing bail bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

12. The Applicant shall report to Badlapur Police Station on every Monday and Thursday.

13. It is made clear that the Applicant shall not indulge in any criminal activities. We clarify that in the event it is brought to the notice that the Applicant has again indulged in criminal activities, his bail would be liable to be cancelled.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)