

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

**CRIMINAL APPLICATION NO. 1769 OF 2018
IN
CRIMINAL APPEAL NO. 1244 OF 2018**

Mohammad Hashim Mohammad Shami ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. N.R. Bubna for the Applicant.
Mr. S.V. Sonawane, A.P.P. for Respondent- State.

**CORAM : INDRAJIT MAHANTY AND
V.K. JADHAV, JJ.**

DATE : 12th DECEMBER, 2018.

P.C. :

1 Pending hearing and disposal of the Criminal Appeal No.1244 of 2018 preferred against the judgment and order of conviction passed by the learned Additional Sessions Judge, Malegaon, dated 15.09.2018 in Sessions Case No.17 of 2015, the Applicant-Original Accused No.1 has preferred this Application for getting release on bail and also for suspension of substantive part of the sentence passed against him.

2 Learned Counsel for the Applicant accused No.1 submits that except the evidence of PW1, there is no other evidence to connect the

Applicant with the crime. So far as evidence of PW1 is concerned, it is full with contradictions and omissions. Learned Counsel submits that even though the prosecution case rest upon the conspiracy hatch by the Applicant-Accused No.1 however, the learned Judge of the trial Court has acquitted the Applicant-Accused No.1 for the charge punishable under Section 120B of the I.P.C. Even the co-accused also came to be acquitted by the trial Court.

3 Learned Counsel submits that the deceased had sustained certain injuries and the Medical Officer in his cross-examination has admitted that those injuries are possible in vehicular accident. Learned Counsel submits that evidence of PW1 is not consistent, reliable and trustworthy. The Applicant is thus entitle to release on bail.

4 The learned A.P.P. has resisted the application and submits that evidence of PW1 is consistent, reliable and trustworthy. The Applicant-Accused No.1 went along with PW1 and deceased for dinner. There is evidence about the previous enmity between them. Thereafter Applicant-Accused No.1 has called upon some persons/assailants by using his mobile, even though the PW1/complainant and deceased had tried to run away from the spot, the Applicant-Accused No.1 had joined the company of those

assailants and remained on the spot till the incident was over. Learned A.P.P. submits that applicant is not entitled to release on bail and the application is thus, liable to be rejected.

5 On perusal of judgment and order of conviction and particularly the evidence of PW1 and PW9, we find that the conduct of PW1 prior to the incident and even after incident, appears to be doubtful. In the circumstances, we are inclined to grant bail to the Applicant with certain conditions. Hence, the following order :

ORDER

- (i) The application is hereby allowed.
- (ii) The applicants-Accused Mohammad Hashim Mohammad Shami be released on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- with one solvent surety in the like amount on the following condition.
- (iii) The applicants shall attend to the concerned police station once in a week on every Sunday from 8.00 a.m. to 11.00 a.m. for a period of six months.
- (iv) Substantive part of the sentence passed against the Applicant stands suspended till the disposal of the Appeal.

4 The application is disposed of accordingly.

(V.K. JADHAV, J.)

(INDRAJIT MAHANTY, J.)