

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.108/2018

IN

CRIMINAL APPEAL NO.45/2018

Rajiksha Bismillasha

..vs..

State of Mah., thr. PSO PS Digras, Darwa

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri Mir Nagman Ali, Counsel for the applicant/appellant.

Shri A.D. Sonak, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : MARCH 16, 2018.

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. Heard learned counsel Shri Mir Nagman Ali for the applicant/appellant and learned Additional Public Prosecutor Shri V.A. Thakare for the State. Also, perused relevant material from the record and proceedings which are called for consideration of this application.

3. The applicant/appellant is convicted by learned Additional Sessions Judge, Darwaha in Sessions Trial No.19/2009 on 18.1.2018 for the offences punishable under Section 307 of the Indian Penal Code and is directed to suffer rigorous imprisonment for 10

.....2/-

years and to pay a fine of Rs.5000/- and, in default of payment of the fine amount, to suffer further simple imprisonment for 6 months.

4. Initially, along with the applicant/appellant, 6 other persons were charged by learned Judge of the Court below for the offences punishable under Sections 147, 148, and 307 read with Section 149 of the Indian Penal Code and under Section 4 read with Section 25 of the Arms Act.

5. After appreciating the prosecution case, as brought before the Court below through the prosecution witnesses and proved documents, learned Judge of the Court below acquitted remaining 6 accused persons and convicted the applicant/appellant alone.

6. The charge-sheet was filed against 8 persons. Accused Kalimsha Bismillasha died during the pendency of the Trial itself and, therefore, the Trial was abated.

7. Injured is Mohd. Jafar Sk. Gaffar (PW5).

8. In order to substantiate the case, the prosecution has examined Kum. Nagma Sk. Gaffar (PW3) and Mariyambi Abdul Gaffar (PW4), sister and mother of the injured so also examined Samir Baig Salim Baig (PW11) as eyewitnesses. Injury certificate of the injured is proved and it is at Exhibit 109.

9. According to evidence of the injured himself, initially he was attacked by means of weapon “Kattha” (कट्था) from backside,

thereafter, he was attacked by other accused persons. As per the evidence of PW5 injured, the applicant gave sword blow initially on his right palm. He fell down. Co-accused Taslimabi was exhorting to kill him. After falling down, as per the evidence of PW5 injured, the applicant pierced sword in his backside.

10. From the cross-examination of this material prosecution witness, his evidence in respect of giving blow on his right palm and piercing sword at his back by the applicant, is a omission.

11. In this case, the Investigating Officer is not examined by the prosecution. Therefore, the said omission remained to be proved. However, it was always open for the prosecution to examine writer of the Investigating Officer who could not be examined since he was reported to be dead.

12. Though PW3 Kum. Nagma Sk. Gaffar, PW4 Mariyambi Abdul Gaffar, and PW11 Samir Baig Salim Baig confirm the presence of the applicant and attribute that he was holding sword, they are not stating specifically that the applicant gave blow on the right palm and, thereafter, pierced the weapon in the back of the injured. Their evidences are of general in nature.

13. Further, though the weapon i.e. sword is attributed against the applicant, the same sword is not sent to the Chemical Analyzer for collecting scientific evidence. So also, clothes of the

applicant were also not sent.

14. Learned Judge of the Court below has himself noticed that injury certificate Exhibit 109 does not reflect any injury on the right palm.

15. Previous statement of the injured is proved by Nayab Tahsildar Bapurao Parate (PW2). His previous statement is at Exhibit 94.

16. Though name of the applicant does appear in the said previous statement, his appearance is along with other accused persons and there is no specific allegation against the applicant/appellant alone. The persons against whom the names are there, they are already acquitted by learned Judge of the Court below.

17. The applicant was on bail, as it could be seen from the operative portion of the impugned judgment.

18. Looking to the quality of the evidences, as brought on record, in my view, the applicant has made out a *prima facie* case to get himself released on bail. Consequently, I pass the following order:

ORDER

(a) The criminal application is allowed.

(b) Substantive jail sentence imposed upon the

applicant, by learned Additional Sessions Judge, Darwaha in Sessions Trial No.19/2009 on 18.1.2018, shall remain suspended during the pendency of the present criminal appeal.

(c) The applicant/appellant Rajiksha Bismillasha, shall be released on bail on he executing a P.R. Bond in the sum of Rs.50,000/- with two solvent sureties of the like amount before the Trial Court.

(d) Learned Judge of the Court below, before whom the Bail Bond will be executed, shall ensure that the entire fine amount is paid by the applicant/appellant.

(e) The applicant/appellant is directed to attend the Digras Police Station, District Yavatmal once in a month i.e. on every Sunday of each month and shall be in the police station from 3:00 p.m. to 5:00 p.m., during the pendency of the present criminal appeal.

(f) The applicant/appellant is directed to remain present before this Court at the time of final hearing

of the present criminal appeal.

(g) With this, the criminal application is allowed and disposed of accordingly.

JUDGE

!! BRW !!

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