

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.37 OF 2019
IN
CRIMINAL APPEAL NO.106 OF 2019**

Shri.Santosh Dhanpal Kale ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

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Mr.P.G.Sarda i/b. Mr.S.R.Ghanavat, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 14th FEBRUARY 2019.

P.C. :

1 This is an application for suspension or stay to the conviction of the applicant/accused. The applicant/accused is convicted for the offences punishable under Sections 307, 324, and 504 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years, one year and six months respectively by the learned trial Court.

2 Heard the learned Counsel appearing for the applicant/accused. He argued that evidence of injured Umesh and Akash shows that they were made known about name of the

assailant by Ajay Rupner. This Ajay Rupner was not present on the scene of occurrence at the time of the incident. The prosecution has not examined this witness. It is further argued that knife used was a pocket size knife. Evidence of P.W.No.3 Rohit Sable shows that it was not sealed after its recovery. It is further submitted that for the first time, the Doctor has deposed that injuries suffered by the victim were dangerous to life. The learned counsel for the applicant/accused placed reliance on the Judgment of Single Bench of this Court in the matter of ***Rakesh Harilal Kahar v. State of Maharashtra***¹ to buttress his submission that if no test identification parade was held dock identification in such situation is of no use.

3 The learned Additional Public Prosecutor opposed the application by submitting that the injured had duly identified the assailant before the Court. Their evidence is supported by medical evidence adduced by the prosecution on record and injuries were lung-deep injuries.

4 I have considered the submissions so advanced and also perused copies of depositions of prosecution witnesses and Judgment and Order of conviction and resultant sentence.

5 It is seen that the incident took place in day light. The injured had opportunity to witness the assailant. Evidence of

¹ 2006(2) Bom.C.R. (Cri.) 533.

injured witnesses cannot be jettisoned merely on the count that no test identification parade was conducted. The same is supported by the medical evidence. No compelling circumstances are brought before the Court for stay to the conviction.

6 The application, as such, is rejected.

7 Hearing of the appeal is expedited.

(A.M.BADAR J.)