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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1344 OF 2018 IN
CRIMINAL APPEAL NO.729 OF 2018

Trishul @ Tirasha Mahimanya Kale ...Applicant
vs.

The State of Maharashtra
through the MIDC Police
Station, Kupwad ...Respondent

Mr.Sahil D. Salvi a/w Mr.Aditya S. Raklade I/b Ms
Tanvi P. Sathe for the applicant
Ms M.H.Mhatre, APP for the respondent-State

CORAM : A.S.OKA, &
SANDEEP K. SHINDE, JJ.
DATE : JANUARY 9, 2019

P.C.:

1 Heard the learned counsel for the applicant and
the learned APP for State. By the impugned Judgment
and Order in the appeal, the applicant has been
convicted for the offence under section 302 of the
Indian Penal Code and has been sentenced to undergo
life imprisonment.

2 The learned counsel for the applicant in
support of his application for grant of bail has
taken us through the testimony of the witnesses and
the findings recorded by the Sessions Court.

3 P.W.No.1 is the complainant. She is the widow
of the deceased Tutarya who is the victim of the

offence. According to the P.W.No.1-Chandani Chivlya Kale on 30th June 2014 at about 3.00 p.m when she along with deceased and her son as well as sister-in-law were sitting out of their house, three persons came to their house. One of them caught hold of her husband and the others assaulted her husband by knife on his shoulder. The husband fell down. When she tried to caught hold of the person who assaulted her husband, she was also assaulted by the same person with knife. Thereafter, the said person ran away by sitting on motor cycle. Then the applicant's sister-in-law and the applicant went to the police station. Thereafter, applicant's husband was taken to civil hospital where he was declared as dead.

4 The submission of the learned counsel for the applicant is that material witnesses have not been examined and the evidence of recovery of the weapon of offence is doubtful which ought to have been discarded. He pointed out that the prosecution case is based on the testimony of P.W.No.6-Prashant Mahaveer Nandrekar. According to his version, two persons were chasing the applicant-accused. He submitted that the said two persons have not been examined. He submitted that this is a case where entire prosecution case has been discarded.

5 The learned APP supported the impugned Judgment and order and submitted that considering the findings recorded therein, no case is made out for

enlarging the applicant on bail.

6 We have considered the submissions. We have perused the notes of evidence. P.W.No.8-Narayan Bhimrao Khot is a Panch witness to recovery of weapon of crime. He did not support the prosecution. The other Panch Witness P.W.No.11 Govind Kashinath Didwal stated in the cross examination that he used to go whenever the police used to call him. He accepted in the cross examination that one Nandkumar Pawar called him when he was doing his work. However, he did not visit the police station. Thereafter, when he was going to Kupwad, police again called him. Thus, the witness accepted that he is being frequently called by the police as a Panch Witness. .

7 P.W.No.6 Prashant Mahaveer Nandrekar stated that around 3.00 p.m., on the date of incident, he was doing the work of plastering. He heard hue and cry. He stated that a person was lying on the ground. Two persons were chasing the person running away and they were pelting stones towards the said person. We may note here that the identity of the said two persons is not brought on record and they have not been examined.

8 Conviction is based on evidence of recovery of weapons and testimony of P.W.No.6. Prima facie, it is very difficult to accept the said evidence as reliable.

9 Hence, a case is made out for suspension of sentence and enlarging the applicant on bail.

10 Hence, we dispose of the application by passing the following order:

(I) The substantive sentence of the applicant under the impugned Judgment and Order shall be suspended till the final disposal of appeal;

(II) The applicant shall be enlarged on bail in the sum of Rs.25,000/- (twenty five thousand only) with one or two sureties to make the said amount;

(III) The applicant shall be enlarged on bail subject to following conditions:

(a) The applicant shall not harass or pressurize the prosecution witnesses in any manner;

(b) Before the applicant is released on bail, he shall furnish his detailed address where he proposes to stay after he is enlarged on bail and his contact telephone number/cell number to the Superintendent of concerned jail;

(c) In case of change of address and telephone number, the applicant will keep the Authorities informed about it;

(d) The applicant shall attend the Trial Court on first day of January and July of every calendar year at 11.00 a.m.;

(e) In the event the applicant fails to report even once, the concerned Court shall submit a report to this Court which shall be forthwith placed before the concerned Bench.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)