

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1240 OF 2019
IN
CRIMINAL APPEAL NO. 139 OF 2018***

Raju Bhimappa Mali ... Applicant in custody
(Original Accused No. 4)
Vs.

1. State of Maharashtra
(Through Shivajinagar P.S.) ... Respondent No. 1
2. Liladevi Manoj Kumar Gattani ... Respondent No. 2

***ALONG WITH
CRIMINAL APPLICATION NO. 1435 OF 2019
(APPLICATION FOR INTERVENTION)
IN
CRIMINAL APPEAL NO. 139 OF 2018***

Satyanarayan Pannalal Gattarni ... Applicant/ Intervenor

In the matter between

Raju Bhimappa Mali ... Applicant in custody
(Original Accused No. 4)
Vs.

1. State of Maharashtra & Ors. ... Respondents

Ms. Ragini Ahuja i/b. Dr. Yug M. Choudhary, Advocate for the Applicant.

Mr. Aniket Nikam i/b. Ashish P. Pawar, Advocate for Respondent No. 2 & Intervenor.

Mr. Arfan Sait, Learned APP for State.

CORAM : B.P.DHARMADHIKARI &
SANDEEP K. SHINDE, JJ
DATE : AUGUST 28th, 2019

P.C.:

1. Applicant is heard with the respondent to oppose bail application moved by the accused no. 4 Raju Mali. Accused No. 4 contends that PW13 claimed to be an eye witness to the alleged murder dated 30.01.2014, has not supported the story of the prosecution. The evidence therefore is only of recovery of blood stained clothes on person of accused at the time of his arrest on 04.02.2014. Contention is that accused could not have been found in blood stained clothes after five days. Observations in Judgment of the Trial Court that those clothes do not connect the accused with the crime are relied upon.
2. Learned APP as also advocate Nikam are strongly opposing request. They pointed out that on 31.01.2014 accused no. 4 met PW11 Mayur in attempt to secure safe place to hide for himself and other three accused persons.
3. It is further submitted that though PW13 has turned hostile,

she accepts that the present applicant and co-accused had been to her shop together. Thus, presence of the applicant and co-accused together at the spot of crime has come on record. It is further pointed out that though PW13 has turned hostile, her statement under Section 164 of Cr.P.C. had supported the prosecution.

4. In relation to PW11, same arguments are advanced. It is pointed out that though he is turned hostile, the accused have not put him any question to show that when accused no. 4 met him, accused no. 4 was not wearing blood stain clothes. It is pointed out that there is a motive in as much as ransom amount was demanded and the accused persons were absconding after the crime. They have been arrested and arrest panchanama also shows blood stain clothes on the person of accused no. 4. It is pointed out that CA report found human blood and hence burden was upon accused no. 4 to demonstrate how human blood could come on his clothes.

5. It appears that Section 164 statement of PW12 in support of oral confession was also relied upon.

6. However, none of these witnesses i.e. PW11, PW12 and PW13

have supported the story of the prosecution in witness box. The prosecution has not examined Learned Presiding Officer, who has recorded statement under Section 164 of Cr.P.C.

7. The fact that accused no. 4 was wearing blood stained clothes on 31.01.2014 or blood stains existed even on his shoes on that day needed to be proved by the prosecution. Though they examined PW11 for some other purpose, PW11 has not stated anywhere including his statement under Section 161 that the clothes or shoes of accused no. 4 were blood stained.

8. In this situation, we find that the applicant/ accused entitled to release on bail. Accordingly, we order his release on the following terms and conditions.

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount.

(b) He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers.

- (c) Similar details in relation to his sureties shall also be furnished.
- (d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter.
- (e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.
- (f) He shall report to the Superintendent/Registrar of Sessions Court, Ichalkaranji on first working Monday in every two months as a condition of his release.
- (g) His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith.
- (h) Criminal Application No. 1240 of 2019 is allowed and disposed of accordingly.

9. Criminal Application No. 1435 of 2019 (Application for Intervention) is disposed of.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)