

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.113 OF 2019

IN

CRIMINAL APPEAL NO.893 OF 2018

KAMALKANT MAHESHCHAND SAINI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Anil Kharatmol, Advocate for the Applicant.

Mr.Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 26th AUGUST 2019

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted of the offence punishable under Section 307 of the Indian Penal Code as well as under Sections 3 and 25 of the Arms Act. He is sentenced to suffer rigorous imprisonment for 10 years apart from

imposition of fine of Rs.10,000/- and default sentence of simple imprisonment for six months for the offence punishable under Section 307 of the Indian Penal Code. Rigorous imprisonment for 3 years apart from some fine and default sentence is awarded on him for offences punishable under Sections 3 and 25 of the Arms Act.

2 Heard the learned counsel appearing for the applicant/accused. He argued that the applicant/accused is a young boy of 19 years of age and the alleged victim of the crime in question is his relative. The applicant/accused had been to Mumbai for attending examination of recruitment in railway. There was love affair between the parties and father of the applicant/accused was in government service. The applicant/accused is behind bars from 3 years, and therefore, he needs to be released on bail.

3 The learned APP opposed the application.

4 The incident in question took place at the house of the victim of the crime in question namely PW2 Mamta Mourya. The applicant/accused is her relative. The applicant/accused used to visit her house on the pretext of giving examination for recruitment in government department. The incident took place on 18th March 2016. The applicant/accused insisted the victim i.e. PW2 Mamta Mourya to marry him. PW2 Mamta refused and therefore, the applicant/accused fired at her neck from point blank range.

5 Evidence of PW4 Dr.Yogesh Parmar shows following injuries on the neck of PW2 Mamta Mourya :

“i) Entry wound of fire arm on right side of neck measuring 4 x 3 x 2 cm with the margin of blackish tattooing around the entry wound. Said injury was at the distance of 3 cm from right side mastoid process and 1 cm below inferior border of mandible of right side.

ii) Cut wound over left eyebrow measuring 1 x 0.5 cm.”

Apart from testimony of the victim, PW1 Babita Mourya is an eye witness to the incident in question.

6 Considering the nature of evidence and the degree of criminality shown by the applicant/accused, though he has spent 3 years in jail, the applicant/accused is not entitled to be released in bail. Therefore, the order :

ORDER

- i) The application is rejected.
- ii) Hearing of the appeal is expedited.

(A. M. BADAR, J.)