

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 199 OF 2019****IN****CRIMINAL APPEAL NO. 197 OF 2019**

Tushar Gautam Bansode

.....Applicant

Vs.

The State of Maharashtra

....Respondent.

Ms. Rohini Wagh a/w Kiran Bhadhane for the Applicant.

Ms. P.P. Shinde, APP for the Respondent-State.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.****DATE : 7th MARCH, 2019.****P.C.:-**

Heard the learned counsel appearing for the Applicant and the learned APP for the Respondent-State.

2 The present Application is by the Appellant who is the Accused No. 4. By the impugned Judgment in the Appeal, the present Applicant and the Accused No. 7-Bala have been convicted for the offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code. For the offence punishable under Section 302, life imprisonment has been imposed and for the offence punishable under Section 307, rigorous imprisonment for six years is

the punishment imposed. The Applicant was on bail during the pendency of the trial.

3 The learned counsel appearing for the Applicant has taken us through the notes of evidence of the prosecution witnesses. She pointed out that at the highest, the role attributed to the Applicant is of assaulting the deceased with fist blows. She submitted that the Applicant has no antecedents and therefore assuming that the prosecution case is true, the Applicant deserves to be enlarged on bail.

4 The learned APP opposed the Application and pointed out that Section 34 of the Indian Penal Code has been applied and the Applicant was all along with the Accused No.7, who stabbed the deceased as well as the injured witness. On a query made by this Court, she has submitted a report dated 7th March, 2019 signed by the Senior Inspector of Police of Kopari Police Station which records that apart from the case in hand, there are no antecedents of the Applicant.

5 Perusal of evidence of P.W. No. 3 injured eye-witness who is the brother of the deceased shows that there was a dispute between the Accused No.7-Bala on one hand and P.W. No.3 and his deceased brother on the other hand. Moreover, it was Accused No.7-Bala who

called the deceased and P.W. No.3 to the place where the offence was committed. His evidence coupled with the evidence on record shows that it is the accused No.7 who was the author of the injuries which resulted into death of the deceased. It is the accused No.7 who assaulted the injured witness with a knife on his head. The role attributed to the Applicant is of assaulting the deceased with fist blows. Another allegation against the Applicant is that he instigated the Accused No.7.

6 Considering the aforesaid circumstances, a case is made out to enlarge the Applicant on bail, on stringent conditions. Hence, we pass the following order-

- a) The substantive sentence imposed upon the Applicant-Tushar Gautam Bansode under the impugned Judgment and Order dated 12th December, 2018 passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 108 of 2014, shall stands suspended till the final disposal of the Appeal;
- b) The Applicant shall be enlarged on bail in the sum Rs.25,000/- with one or two local solvent sureties

in the like amount;

- c) The Applicant shall be enlarged on bail, subject to condition of reporting to the concerned Trial Court on every first Monday of the months of January and July of every calendar year at 11.00 a.m till the final disposal of the Appeal;
- d) In case the first Monday falls on a Court holiday, the Applicant shall attend the Court immediately on the next working day;
- e) In the event, the Applicant fails to attend the Court even once, the concerned Trial Court shall submit a report to the Registrar (Judicial-I) of this Court who shall immediately place the same before the appropriate Bench;
- f) Application is disposed of in the aforesaid terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)