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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.238 OF 2019 IN
CRIMINAL APPEAL NO.929 OF 2018

Kalim Maijin Shaikh ...Applicant
vs.
State of Maharashtra ...Respondent

Ms Ragini Ahuja I/b Dr.Yug Mohit Chaudhry for the
applicant
Ms M.H.Mhatre, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : FEBRUARY 26, 2019

P.C.:

1 This is an application for grant of bail by the accused No.1. The applicant is claiming parity on the basis of the order dated 24th January 2019 passed by this Bench in Criminal Application No.1699 of 2018 on the application made by the accused No.4. Paragraphs 2 and 3 of the said order read thus:

"2 The incident is of 14th October 2010. On the very day the accused were arrested. The allegation against the applicant by the prosecution is that the applicant and other accused persons suspected that deceased-Sufi had stolen a cell phone and therefore, they assaulted the said Sufi. The allegation is that they assaulted Sufi by Bamboos and a big spoon. They tied him with a plastic rope.

The Applicant is in custody from 14th October 2010. Thus, the Applicant is in custody for more than 8 years.

3 The prosecution case is mainly based on the deposition of P.W.No.12-Imran, who is the only eye-witness. We have perused the evidence of P.W.No.12. Apart from the fact that he kept quiet for a period of 2 days from the date of incident and did not report to the police, from paragraph No.12 of his deposition, we find that there are material omissions. Considering the material omissions and considering the fact that P.W.No.12 is the only eye-witness and considering the other evidence on record, we find that this is a case where the Applicant will have to be enlarged on bail. The applicant has already undergone sentence for 8 years and more and there are no antecedents."

2 The learned APP submitted that benefit of parity will not be available as the only eye witness has deposed about the presence of the applicant at the scene of offence and that there is recovery of Bamboo stick at his instance.

3 There are two reasons for accepting the argument of parity. Even the present applicant is in custody for more than eight years. Secondly, the observations in paragraph 3 of the order passed on

application preferred by the accused No.4 are in respect of the only eye witness. Alleged recovery of Bamboo stick at his instance will not disentitle the applicant to grant bail on the ground of parity.

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

(I) The substantive sentence imposed upon the Applicant-Kalim Maijin Shaikh (accused No.1) under the impugned Judgment and Order dated 9th May 2012 passed by the learned Additional Sessions Judge, Bombay in Sessions Case No.42 of 2011 shall stands suspended till the final disposal of the Appeal;

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

(III) The Applicant shall be enlarged on bail, subject to condition of furnishing to the Jail Superintendent the address of the place of residence where he proposes to stay after he is enlarged on bail along with his contact telephone/cell phone number;

(IV) The Applicant shall be enlarged on bail, subject to further condition that the Applicant shall report to the concerned Trial Court on 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;

(V) If there is any default on the part of the Applicant in reporting, the concerned Trial Court,

shall submit a report to the Registrar (Judicial-I) of this Court who shall place the same before the appropriate Bench;

(VI) Application is disposed of on aforesaid terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)