

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 240 OF 2019
IN
CRIMINAL APPEAL NO. 792 OF 2014

Babu Appa Durai Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Manoj Mohite a/w Mr. Shailesh D. Chavan i/by Priyanka Dave
for the applicant.

Mr.J.P. Yagnik, APP for the respondent State.

CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.
DATE : JULY 05, 2019

P.C.:

Heard Advocate Mohite for the applicant and Mr.Yagnik, APP for the respondent State. Perused the order dated 13/2/2018 passed by this Court in Criminal Application No.517/2016 whereby original accused no. 3 and accused no. 6 have been released on bail.

2. Advocate Mohite submits that the names of those applicants namely accused no.3 and accused no. 6 were not recorded in the First Information Report and the statements of eye witnesses were not recorded on the day of incident though

they were available but the same were recorded on the next day. He submits that though the name of the present applicant/accused no. 2 was mentioned in the FIR, name then disclosed by reporter PW 11 Sukhdeo was Babu Surai. While deposing in Court, he corrected the name as Babu Durai. He pointed out that according to this witness, present applicant fired shot through revolver on the deceased. Though the revolver has been produced on record, the bullets fired and the empty bullets cannot be connected with the crime. He states that accused no. 2 has completed about 11 years of imprisonment and appeal is not likely to be heard in near future. In this situation, he seeks release on bail during the pendency of the appeal.

3. The request is strongly opposed by the learned APP. He contends that the difference in surname is not very relevant as he has mentioned accused no. 2 and identified him. He further states that the evidence of ballistic expert has been considered by the trial Court and the findings recorded by it show that the bullets and test fire cannot be compared. However, according to him, the recovery of revolver and evidence of PW 11 is sufficient at this stage to deny bail to accused no. 2. He further adds that though names of accused nos. 3 and accused no. 6 were not disclosed at the time of registering the FIR, name of the present

applicant was very much mentioned at that time.

4. The facts at hand show that though all eye witnesses were available on the day on which the incident took place, the statements of many of them have been recorded on the next day. Not only this, the names of all accused persons were not disclosed while registering the FIR and the other accused persons have been added thereafter. It is in this backdrop that the grievance of the present applicant falls for consideration.

5. PW 11 claiming to be knowing accused no. 2 describes him as Babu Surai. If he would not be knowing, he could have informed the police accordingly. If he had any about about his name, again he could have informed the police authorities accordingly. In Court, while deposing instead of mentioning the name as Babu Surai, he has mentioned name as Babu Durai. He has stated that when he lodged the report, he knew Babu Durai as Babu Surai.

6. Though the revolver has been brought on record, its connection with the offence has not been established as the bullets it has fired, cannot be compared with the empty bullets which are recovered at the crime spot.

7. This Court has in its order dated 13/2/2018, while granting bail to accused no. 3 and accused no. 6 found that there was no

chance of the appeal being heard in near future. The situation remains the same even today.

8. We are therefore, inclined to release the applicant on bail on the following terms and conditions :

(a) He shall execute personal bond in the sum of Rs. 25,000/- 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 Additional Sessions Court, Pune on first working Monday in every month as a condition of his release.

(g) His failure to observe any of the terms and conditions mentioned above shall entitle the respondent State to take him in custody forthwith.

(h) Application is accordingly allowed and disposed of.

(MRS.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)