

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 390 OF 2019
IN
CRIMINAL APPEAL NO. 421 OF 2019

Bhardwaj @ Bala Kishor Londhe Applicant

Versus

The State of Maharashtra ... Respondent

Mr.Omkarnath Tiwari for the applicant.

Mrs. M.H. Mhatre, APP for the respondent State.

CORAM : B.P. DHARMADHIKARI &
SMT.SWAPNA JOSHI, JJ.
DATE : JUNE 13, 2019

P.C.:

Because original accused nos. 4 and 6 are released on bail by this court respectively on 07/03/2019 and 05/04/2019, the present application is moved by accused no. 7.

2. Mr. Tiwari, learned counsel for the applicant states that the FIR in the matter is lodged by an auto rickshaw driver who has not seen the incident and person who claims to have witnessed it, has never lodged any report. Though the applicant was available in the area, he has been taken in custody almost after one year. After one year, at his instance, weapon i.e. knife is shown to be discovered. That knife though dug out from the

earth, as per panchanama is new and it reveals the falseness of the story of the prosecution. Submission is because of the alleged previous incident, the name of the applicant was added as accused in the FIR and as there was no material, he was not taken in custody.

3. Learned counsel also adds that as on today, accused no. 7 has put in 5 years in Jail and the appeal filed in the year 2019 is not likely to be decided finally in the near future. He therefore, urges that on suitable terms and conditions, the applicant may also be released on bail.

4. Learned APP is strongly opposing the prayers. She submits that the first informant is a neighbour and after taking the deceased and his injured brother (PW 3) to hospital, he came to police station and lodged the report. The investigating agency has thereafter carried out investigation independently. Though the other accused persons could be arrested immediately, for about one year, the applicant/accused no. 7 was absconding. She further submits that the material on record shows the role played by accused no. 7.

5. She has also invited our attention to the observations made by this Court in its order dated 07/03/2019 and 05/04/2019.

6. After hearing the respective counsel, we find that there is no cross examination of the I.O. to demonstrate that the applicant was not absconding and was taken in custody with some oblique motive after more than one year. Prima facie, it appears that the injured eye witness (PW 3) who happen to be brother of the deceased has pointed out the motive and the main role played by accused no. 7. This is appreciated in the order dated 07/03/2019.

7. Accused nos. 4 and 6 have been released on bail because of prima facie finding that they have not used any weapon.

8. We therefore, find that the present application is misconceived. Hence, the same is rejected. However, we expedite the hearing of the appeal.

(SMT.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)