

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 433 OF 2019
IN
CRIMINAL APPEAL NO. 445 OF 2019

Tukaram Kerba Netke ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Somnath Ladda, Adnan Ansari i/by Sandeep Ladda for the applicant.

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

CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : AUGUST 19, 2019

P.C.:

Heard respective counsel.

2. The present applicant was accused no. 4 in Sessions Case No. 92 of 2014 and has been convicted under section 143, 147, 148, 302 read with 149 IPC on 18/2/2019 by Additional Sessions Judge, Khed Rajgurunagar, Dist. Pune. He was on bail during the trial. According to the prosecution there were total six accused persons. One of them is juvenile while one is still absconding. Four persons were tried together.
3. PW 1 Sachin Panchal, one Yogesh Patil and Kishore Pande

are claimed to be the eye witnesses. Prosecution has examined only Sachin while other two persons have not been examined as witnesses. Yoegsh Patil while going to fetch ambulance (as alleged) came across PW 2 Shivaji and narrated the incident to him. Shivaji has been examined as PW 2.

4. Applicant/accused no. 4 has been arrested after more than one month and 10 days of the incident. There is no recovery from him or at his instance.

5. PW 1 Sachin has claimed that after deceased Amol fell down, the present applicant assaulted him by iron rod.

6. PW 1 and other two colleagues namely Yogesh Patil and Kishore Pande are alleged to be members of the rival gangs and against them offences are already pending. The attack has taken place at about 1.45 in the noon and PW 1 Sachin has lodged the police report at about 7.30 pm. PW 2 claims that he had been to hospital in ambulance with Amol and in the hospital, police met him at 4.00 pm. He narrated the incident to police and it was recorded and police also obtained his signature upon it. Thus even after 4.00 pm or 4.30 pm, FIR has been registered after 3 hours.

7. We, in this situation, find that in the case of Masalti Vs. State of UP: AIR 1965 SC 202 it is held that in such matters, there

have to be more than one witnesses supporting the role of accused.

8. Taking overall view of the matter, we are inclined to release the applicant on bail on the following terms and conditions :

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court 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 Sessions Court, Khed Rajgurunagar, Dist. Pune on first working Monday after every two months as a condition of his release.

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

(h) Application is accordingly allowed and disposed of.

(SANDEEP KASHINATH SHINDE, J.)

(B.P. DHARMADHIKARI, J.)