

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.643 OF 2016
IN
CRIMINAL APPEAL NO.366 OF 2016

Shyamrao Piraji Bandgar
versus
The State of Maharashtra

Applicant

Respondent

Mr.Satyavrat Joshi I/by Jaydeep D. Mane for applicant.
Mrs.P.P.Shinde, APP, for State.

CORAM : B.P.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 26th March 2019

PC :

1. Two convicts who are appellants in Criminal Appeal No.366 of 2016, seek bail on the ground that the conviction has been ordered by Trial Court by accepting evidence of two eye witnesses, though they have turned hostile. These eye witnesses have been accepted because of production of a DVC (Disk Video Cassette) at Exhibit-70 and a CD (Compact Disk) prepared on its basis which is at Exhibit-59. Neither the DVC nor the CD has necessary certification in terms of Section 65(B) of Evidence Act and the eye witnesses have also not been confronted by playing it in open Court. The Trial Court has viewed the CD at Exhibit-59 privately on its laptop and the appellants or their advocate is not aware of contents of said CD. It is submitted that the Trial Court also has not cross verified the contents of CD with DVC.

2. It is pointed out that the Trial Court has accepted seizure of blood stained clothes from accused u/s 27 of Evidence Act. The chemical analyzer has not found any blood stains on those clothes and very mention of those stains has come by way of omission in the evidence of panch witness.

3. Learned APP is opposing the request for release on bail. She heavily relied upon observations of Trial Court in paragraph 26 of the impugned judgment. She further submits that the very purpose of DVC recording is to keep control on such witnesses who latter on prefer to turn hostile. Learned APP has invited our attention to earlier efforts made by this Court to place the appeal at the end of board for final hearing. She submits that the appeal may be heard finally as already attempted by this Court.

4. It appears that from April-2018 the efforts to take up the appeal finally are going on. The Court has got matters which are about ten years old still pending and appellants therein are in jail. Additionally there are few confirmation cases also. In present situation, grant of final hearing in near future appears to be not possible.

5. We have perused the evidence of PW-30 photographer as also the investigating officer. The DVC at Exhibit-70 is not shown to be used by photographer for preparing CD at Exhibit-59. The CD at Exhibit-59 is prepared by the investigating officer himself. It is, therefore, an act of the investigating officer. The Trial Court has not viewed original DVC. It has viewed the CD privately on laptop. Neither the accused nor their counsel were present at that juncture.

6. If we presume the CD to be admissible piece of evidence, still the hostile eye witnesses have not been confronted with it. Hence, material therein could not have been used to the prejudice of applicant-accused.

7. The applicant-accused was on bail during trial. He appears to be in jail after 18th March 2016 i.e. the date of impugned judgment. In the situation we direct his release on bail during pendency of this appeal on same terms and conditions subject to his furnishing new PR bonds and sureties as per the orders of Trial Court. In addition, he shall undertake to report to the Registry/Superintendent of the concerned Sessions Court on every first working Monday in each month without fail as a part of condition of his release on bail. Failure to do so shall result in cancellation of bail and the Trial Court shall be free to proceed further to take him in custody as per law.

8. With these directions, Criminal Application No.643 of 2016 is allowed and disposed off.

(PRAKASH D. NAIK, J.)

(B.P.DHARMADHIKARI, J.)

MST