

27.8.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 891 OF 2019

IN

APPEAL NO. 798 OF 2019

Prakash Ramchandra Sanas

...Applicant

V/s.

The State of Maharashtra and

anr

....Respondents

Mr. Rahul S. Kate, Advocate for the applicant.

Mr. J.P. Yagnik, APP for State-respondent no.1.

Mr. Meghdeep M. Oak, Advocate for respondent no.2.

CORAM : B.P. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Tuesday, 27th August, 2019.

P.C. :

1. After hearing respective Counsel at some

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length, on 5th August, 2019 we had passed following order :

"1. Learned counsel for the applicant/accused states that though the identity of the accused persons is claimed to be known at the time of attack itself, the FIR is registered against unknown persons and statements of the eyewitnesses, i.e., PW4 Satish and PW7 Omkar are recorded on next day, i.e., on 06/02/2014.

2. Learned APP has invited our attention to the arguments advanced by the accused before the trial court, requesting it to draw adverse inference against prosecution for non-production of the statement under section 161 Cr. P. C. recorded on 05/02/2014. He points out that the trial court has refused to draw such inference.

3. He is however seeking time to verify correct position, as according to him, incident has taken place late in the

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evening, and hence, date may have been changed after 12.00 O'Clock in the night. Learned counsel for the applicant disputes this. According to him, incident is before 4.00 p.m. in the afternoon.

4. In the light of emerging situation, we grant learned APP the time of one week to verify position and to make a statement.

5. Stand over to 13/08/2019."

2. Today, it is not in dispute that FIR was registered after about one and half hour of the incident. Incident has taken place at 4.50 p.m. on 5th February, 2014 and son of deceased registered FIR at 17.49 hrs. Said son has been examined as P.W.6 and in cross-examination he has deposed that he met eyewitness P.W.4 at 4.30 p.m. He also stated that P.W.4 had informed him the names of assailants.

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3. Despite this, FIR has been registered against unknown persons. Statement of P.W.4 has been recorded on 6th February, 2014. P.W.4 has claimed that, his statement was recorded on 5th February, 2014 itself. No such statement has come on record.

4. The clothes allegedly worn by accused are found to be bloodstained. However, Investigating Officer has accepted that no lac-sealing was done.

5. Counsel for applicant has submitted that Chemical Analyser therefore could not have verified whether the seals put at the time of alleged seizure was same and when clothes were received in Laboratory.

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6. Learned APP has invited our attention to the evidence of P.W.2 to urge that, after seizure of clothes, they were wrapped in brown paper and sealed by paper seals which were signed by panch witnesses.

7. We therefore find substance in the contention of applicant that, identity of seals put allegedly at the time of seizure as deposed by P.W.2 with seals (if any) under which clothes were received by Laboratory, could not have been verified prima-facie.

8. Hence, we are inclined to release applicant accused on bail on following terms and conditions :

(a) The applicant shall execute personal

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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, Satara on first working Monday in 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 K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)