

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1048 OF 2018****IN****CRIMINAL APPEAL NO. 142 OF 2018**

Sanjay Balu Nagare

.....Applicant

Vs.

State of Maharashtra

....Respondent.

Dr. Yug Mohit Chaudhary for the Applicant.

Mr. Arfan Sait, APP for the Respondent-State.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 10th JANUARY, 2019.****P.C.:-**

This Application is filed by Appellant in Criminal Appeal No. 142 of 2018. The learned counsel appearing for the Applicant states that he will file Vakalatnama for the Applicant even in Criminal Appeal No. 142 of 2018. We accept the statement.

2 This is an Application made by the Applicant-accused No.3 for relief of suspension of sentence pending the final hearing of the Appeal and for grant of bail.

3 The Applicant and other co-accused have been convicted by the learned Additional Sessions Judge for offences punishable

under Sections 302, 387, 120-B and 341 read with Section 34 of the Indian Penal Code.

4 The learned counsel appearing for the Applicant has taken us through the notes of the evidence and the findings recorded by the Trial Court. His submission is that, it is a case of no evidence and finding of the involvement of the Applicant in the alleged offence is based on inadmissible evidence. The learned APP opposed the Application by pointing out that Section 120-B of the Indian Penal Code has been applied.

5 Perusal of the impugned Judgment and Order shows that the case of the prosecution against the Applicant is based on the statements of the witnesses recorded in memorandum of panchanama under Section 27 of the Indian Evidence Act, the recovery of alleged blood-stained clothes on the person of the Applicant and the failure of the Applicant to explain the injuries found in his person at the time of arrest.

6 In paragraph 27 of the impugned Judgment, the submission of learned APP before the Trial Court has been recorded. Paragraph 27 reads thus:-

“27] Ld. A.P.P. submitted that, though the case in hand is based on the evidence of direct witnesses as well as the circumstantial evidence, as the direct witness PW-13 supported the prosecution half-heartedly, the prosecution is mainly relied upon the documentary evidence in the form of various panchnamas prepared at the instance of the arrested accused persons wherein, the incriminating articles like their blood stained clothes of deceased as well as the accused persons and the scythes used for assault on Manojkumar were seized, the C.A. report and the evidence of panch witnesses and investigating officer. Ld. A.P.P. submitted that, by examining the panch witnesses for the discovery memorandum statements given by the accused persons, on the basis of which the incriminating articles were seized under the respective panchnamas; the inference of involvement of the accused persons in the attack on deceased Manojkumar on the relevant date of incident is well established. Ld. A.P.P. also pointed that, the aspect of demand of extortion has been revealed from the inquiry made with the accused persons and it has been supported by the memorandum statement of accused no.3 and it's consequential panchnama, wherein he shown the places situated nearby the place of assault proved the fact that, the accused persons in furtherance of their common intention has hatched the conspiracy of eliminating Manojkumar Gattani, a businessman who refused to pay them ransom as an extortion amount. Ld. A.P.P. Further submitted that, the said aspect has to be considered as a discovery of fact within the knowledge of the accused persons only. Ld. A.P.P. also submitted that, said conspiracy has been executed by the accused persons by a thorough preparation of proper planning in which, they procured the weapons for assault and executed the same on the fateful night on 30.1.2014.”

7 As far as the evidence of recovery of clothes is concerned, it is admittedly not at the instance of the present Applicant but, it is allegedly at the instance of the accused No.1. *Prima facie*, there is no evidence on record to show that the clothes recovered at the instance of the accused No.1 were the clothes on the person of the Applicant at the time of the commission of offence. As regards the memorandum of panchanama based on the statement of the Applicant, the case of the prosecution is that the Applicant showed the place of murder of the deceased where the conspiracy of murder of the deceased was hatched wherein all the accused were involved.

8 *Prima facie*, as there is no legal evidence on record to connect the Applicant with the murder of the deceased, at this stage for considering the Application for bail, the failure of the Applicant to explain the injuries on his person, may not be relevant. Hence we pass the following order:-

- a) The sentence imposed upon the Applicant accused No.3 Sanjay in the impugned Judgment and Order dated 24th November 2017 shall stand suspended till the disposal of the Appeal;
- b) The Applicant shall be enlarged on bail in the sum

Rs.25,000/- with one or two sureties to make the amount;

- c) The Applicant shall be enlarged on bail, subject to condition of furnishing detailed address of the place where the Applicant-accused proposes to reside after he is enlarged on bail and his contact telephone number. The necessary information shall be furnished to the concerned Superintendent of Jail;
- d) The bail is granted subject to the condition of the Applicant reporting to the Trial Court on first Monday of every January and July of each calender year at 11.00 a.m. till the final disposal of the Appeal;
- e) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)