

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1033 OF 2019
IN
CRIMINAL APPEAL NO. 896 OF 2019

Andy @ Dipak Manikrao Waghmare. ...Applicant.

Versus

State of Maharashtra. ..Respondent.

Mr. A. P. Mundargi, Senior Advocate with Mr. Subir Sarkar for the Applicant.

Mr. S S. Hulke, APP for the Respondent-State.

Coram : RANJIT MORE &
M. S. KARNIK, JJ.

Date : **December 4, 2019.**

P. C. :

1. Yesterday, when the matter was called out for orders, none appeared on behalf of the intervener, and therefore, we adjourned the matter to the date and have taken up for hearing today.

2. We have heard Mr. Mundargi, learned senior counsel appearing on behalf of the Applicant and Mr. Hulke, learned APP for the Respondent-State.

3. The Applicant - who is original accused no.7 along with 10 others was tried by the Additional Sessions Judge, Nashik in Sessions Case No.266 of 2017 for the offences punishable under sections 120B, 143, 147, 148, 302, 307 read with 149 of

the Indian Penal Code, 1860 and section 37(1)(3) read with section 135 of the Maharashtra Police Act. The Applicant and 6 others came to be convicted for the offence punishable under sections 302 and 307 read with 149 and 120B of IPC and sentenced to suffer rigorous imprisonment for life and 7 years respectively.

4. The incident in question occurred in the night intervening between 15 and 16 September 2015 in which one Gunaji Jadahv was murdered and Kishor Nagare was seriously injured. The FIR was registered on the same day by Hiralal (PW-1). In the FIR, there is no reference to the name of present Applicant. In supplementary statement, which was recorded on 20th September 2015, he has mentioned about the presence of present Applicant with beer-bottle. In deposition, however, he does not mention the name of present Applicant. Three eye-witensses, namely, PW-2, PW-3 and PW-4, have stated that though Applicant was present with the beer-bottle, they have not attributed any further role to the Applicant.

5. Original accused No.10 Sushil Gaikwad was also convicted by the Sessions Judge. He has filed appeal against conviction, which is admitted. He had also filed Criminal

Application No. 1070 of 2019. By the order 15th October 2019, the said application was allowed and he was granted bail. The present Applicant claims parity with accused no.10. Perusal of the said order dated 15th October 2019 reveals that accused was carrying chopper, however, no specific overt-act is attributed to him by any of the witnesses and on that count, he was granted bail.

. In our opinion, the case of present Applicant and the case of accused no.10 is identical except to the factum, the weapons they were carrying were different, namely, chopper in the case of accused no.10 and beer-bottle in the case of present Applicant. That apart, the present Applicant was on bail during trial and he was taken into custody subsequent to the judgment of conviction.

6. Taking overall facts and circumstances of the case into consideration, we are inclined to release the Applicant on bail. The application is accordingly disposed of by passing following order :

-: O R D E R :-

[1] Pending appeal, the sentence imposed upon Applicant shall remain suspended.

[2] The Applicant be enlarged on bail in the sum of Rs.25,000/- to the satisfaction of the trial Court with one or more sureties in the like amount.

[3] For the period of six months from today, the Applicant shall not enter into Nashik city. After the expiry of period of six months, the Applicant shall report to Sarkarwada Police Station, Nashik on every Friday, between 9.00 a.m. and 11.00 a.m.

[M. S. KARNIK, J.]

[RANJIT MORE, J.]