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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1308 OF 2018 IN
APPEAL NO.599 OF 2016

Hasrudin Munnan @ Chunna Malik ...Applicant
vs.
The State of Maharashtra ...Respondent

Ms Ragini Ahuja I/b Khan Abdul Wahab for the
applicant
Ms Rohini Salian, Spl. P.P. a/w Ms M.H.Mhatre, APP
for the respondent-State

CORAM : A.S.OKA, &
 A.S.GADKARI, JJ.
DATE : JANUARY 31, 2019

P.C.:

1 Heard the learned counsel for the applicant and the learned Special Public Prosecutor for State. The present application is by the accused No.2. The accused Nos.1,2 and 4 were convicted under the impugned order subject matter of challenge in the appeal for offence punishable under section 120-B and section 302 read with section 120-B of the Indian Penal Code. The accused No.4 was also convicted for the offence punishable under section 201. Incidentally accused No.4 is the husband of deceased victim of the offence who lodged First Information Report.

2 The learned counsel for the applicant invited our attention to the order dated 27th July 2018 passed by the Division Bench of this Court in

Criminal Application No.1631 of 2017 taken out by the accused No.4. She also invited our attention during the course of hearing to the case made out by the accused No.4 in the application which is recorded in paragraph 4 of the said order. She submitted that the accused No.4 is the brain behind conspiracy and once he is enlarged on bail, the applicant is also entitled to be released on bail.

3 The learned Special Public Prosecutor submitted that as per the finding recorded by the learned Additional Sessions Judge, the present applicant who was riding a motor bike along with the accused No.1 had assaulted the deceased and in fact, it is not the case made out by any Prosecution Witnesses that only the accused No.1 assaulted the deceased. She submitted that the accused No.4 did not actually participate in the incident. Moreover, the accused Nos.1 and 2 were staying under the same roof. She pointed out that there is a recovery of a motor cycle at the instance of the accused No.2. She would therefore submit that the case of the present applicant stands on totally different footing.

4 We have considered the submissions. In paragraph 101 of the impugned Judgment, the learned Additional Sessions Judge has recorded a finding that prosecution has established that the conspiracy was hatched by the accused Nos.1,2 and 4 to commit a murder of wife of the accused No.4, as the said accused No.4 wanted to get rid of his wife. The

learned Additional Sessions Judge has accepted that the accused No.4 wanted to get rid of his wife in view of his relationship with one Rupal (accused No.5 who was discharged). Thus, the case of the prosecution is that accused No.4 is the real brain behind the conspiracy. At this stage, we may note that in order dated 27th July 2018 passed by the Division Bench granting bail to accused No.4, the submission of the prosecution has been recorded in paragraph 4. The submission was that the most incriminating circumstances against the accused No.4 was his telephonic conversation with accused No.2 before the incident and the accused No.2 telephonically contacted the accused No.1 who is the assailant.

5 Recovery of weapon of the assault is at the instance of accused No.1. Going by the submissions before the Court which are recorded in the order dated 27th July 2018, the applicant accused No.2 is co-conspirator and only difference in the role attributed to the accused No.4 and the present applicant is that the present applicant accompanied by the accused No.1 came to the place where offence was committed on a motor cycle which was recovered at the instance of the applicant.

6 The accused No.4 is stated to be the brain behind the conspiracy as he wanted to get rid of the deceased. He is already enlarged on bail. Hence, there is no reason to deny the same relief to the

present applicant. The learned Special Public Prosecutor stated that to the knowledge of the concerned Officer instructing her, there are no antecedents. Moreover, the applicant has undergone sentence of more than eight years.

7 Accordingly, we pass the following order:

- (I) The order of sentence imposed on the applicant-Hasrudin Munnan @ Chunna Malik stands suspended till the final hearing of the appeal;
- (II) The applicant shall be enlarged on bail in the sum of Rs.25,000/- (Rupees twenty five thousand only) with one or two solvent and local sureties in the like amount;
- (III) Bail is granted subject to condition that the applicant will furnish a detailed address of his place of residence where he proposed to stay after he is enlarged on bail and contact telephone number to the Jail Superintendent;
- (IV) Bail is granted subject to condition that the applicant will report to the learned Trial Judge on first Monday of January and July of every calendar year at 11.00 a.m till the disposal of the appeal;
- (V) In the event, the learned Trial Judge finds that the applicant has committed any breach of the conditions, he will forthwith submit a report to that effect to the Registrar (Judicial-I) who will place the same before the concerned Bench;

(VI) Application is disposed of on above terms.

(A.S.GADKARI,J.)

(A.S.OKA,J.)