

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1171 OF 2015
IN
CRIMINAL APPEAL NO. 54 OF 2014

Sikander @ Sikka Ibrahim Shaikh.	...	Applicant.
V/s.		
The State of Maharashtra.	...	Respondent.

Mr.Shirish Gupte, Senior Advocate with Mr.Ganesh Gole, Mr.Ateet Shirodkar i/b. Mr.Baburav D. Shinde for the applicant.

Mr.J.P.Yagnik, APP for the respondent- State.

Mr.Amin H. Solkar i/b. Mr.R.S.Mhamane for the intervener.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 20th February 2019.

P.C. :

Heard the learned senior counsel appearing for the applicant, the learned APP for the State and the learned counsel for the intervener/ first informant. This is an application for bail filed by accused No.1. The applicant- accused No.1 has been convicted for the offence punishable under section 302 of Indian Penal Code (for short "IPC") and has been sentenced to undergo life imprisonment. The case of the prosecution, in brief, is that the deceased Pravin was the President of the Republican Party of India of Taluka- Vasai. The complainant- Lalchand was his employee. It is alleged that there was a long standing enmity between

the deceased- Pravin and the applicant- Sikandar. At about 2.30 p.m. on 29th January 2009, the present applicant and others came to the office of deceased- Pravin and the applicant called Pravin out of office. He came out of office and there was a fight. It is alleged that the present applicant and - accused No.2- Anil Singh and one Ajitsingh brought out the revolver tied to their waist. All of them pointed revolvers at Pravin and fired shots. Pravin sustained bullet injuries to his neck and abdomen. The prosecution is relying upon the testimony of eye witnesses, particularly PW16, PW17 and PW18.

2. The learned senior counsel appearing for the applicant has taken us through the material portion of the evidence adduced by the prosecution. He submitted that though pistol is shown to be recovered at the instance of the applicant, PW16 and PW18 who admitted that it is not the pistol by which applicant fired bullets at the deceased. He pointed out the evidence Ballistic Expert- Shri Gautam Ghadge (PW23). He submitted that according to the opinion of the Ballistic Expert, the bullets used for the offence were not fired from the pistol which was recovered at the instance of the applicant. The learned senior counsel pointed out that the applicant was arrested on 1st February 2009 and, thus, he has undergone sentence for more than 10 years. The learned APP submitted that there is no dispute that the deceased succumbed to the bullet injuries and there are two eye-witnesses. The learned counsel appearing for the complainant/ first informant submitted that the co-accused who alleged to have fired bullets at the deceased is absconding and there is every possibility that the bullets fired by the applicant may not have been

recovered as the same may not have come out of the body of the deceased.

3. We have carefully considered the submissions. We have perused the evidence of the prosecution witnesses including PW16. He deposed that the applicant was having gun/pistol tied to his waist. He took it out and shot at the abdomen and below the right side ear of deceased- Pravin. By giving threats by showing pistol, the applicant and other accused sat in a vehicle and went away towards the station. In paragraph-8 of the examination-in-chief, he deposed that he can identify the pistol which was in the hand of the applicant which was made of steel and was shining. However, when the pistol (article-H) which was recovered at the instance of the applicant was shown to him, he stated that the said pistol was not with the applicant. We have also perused the evidence of PW17 who again deposed that the applicant and other accused- Anil fired pistole shots at Pravin. We have also perused the evidence of PW18- Raju who has stated that he can identify the pistol, if shown which was used in the incident. When the weapon at article-H was shown to him, he stated that it was not with any of the three accused as they were having pistol which was glittering. The Ballistic Expert- Gautam (PW23) deposed that the empty do not tally with fired cartridges from country made revolver at Exhibit-1. He deposed that the bullets were not fired from country made revolver at Exhibit-1. Perusal of the aforesaid evidence would show that *prima facie*, a serious doubt is created about the prosecution case of the applicant firing bullets at the deceased- Pravin. Even the eye witness accepted that the only weapon recovered at

the instance of the applicant was not in his hands at the time of the incident.

4. The applicant has undergone sentence for more 10 years. About antecedents of the applicant, the learned APP has placed on record a letter dated 14th April 2009 addressed by the Nalla Sopara Police Station which shows that four offences have been registered against the applicant during 2001 to 2006. However, the said cases resulted in acquittal. The report also records that the applicant was released on parole on four occasions and was released on furlough on five occasions and no adverse conduct was reported when he was granted such liberty.

5. Hence, a case is made out to enlarge the applicant on bail. Accordingly, we pass the following order:

O R D E R

- (i) The substantive sentence imposed upon the applicant vide judgment and order dated 3rd/5th December 2013 passed Additional Sessions Judge, Vasai in Sessions Case No.47/2009 shall stand suspended till the final disposal of appeal and that he shall be enlarged on bail in the sum of Rs.25,000/- with one or two local solvent sureties in the like amount;
- (ii) The applicant is granted bail subject to the condition that the applicant reports to the concerned trial Court on every first Monday of January and July of every calendar year at 11.00 a.m. till the disposal of appeal. If such Monday is a Court

Holiday, the applicant shall report to the concerned trial Court on the next immediate Court working day;

- (iii) On the failure of the applicant to remain present before the trial Court as directed above, the said Court shall forthwith submit a report to this Court through the Registrar (Judicial-I) who, in turn, shall place the said report before the appropriate Division Bench for necessary orders;
- (iv) Application is disposed of on the above terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)