

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1482 OF 2018
IN
CRIMINAL APPEAL NO.361 OF 2016

Shri. Amol S/o. Bhanudas KotkarApplicant

Versus

The State of MaharashtraRespondents

Mr. Abhaykumar D. Ostwal a/w. Nilesh Tribhuvan and Darshana Naval,
Advocate for the Applicant.

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

Mr. Jitendra Gaikwad, Advocate for the Intervener.

**CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.**

DATE : 18th DECEMBER, 2019.

P. C. :

1. Total 15 persons were charged for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860. Out of these total 15 persons, 6 persons came to be convicted by the impugned Judgment and order dated 11.04.2016 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.62 of 2014. Original accused Nos.7, 10 and 12 were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 and original accused Nos.13 and 14 were convicted for the offence punishable under Sections 3 and 4 of the Arms Act, 1959. The present applicant is original accused No.12. He is in custody since last three years and nine months.

2. The applicant/original accused No.12 has filed Criminal Appeal No.361 of 2016 which is already admitted. He had also filed Criminal Application No.657 of 2016 for bail, which came to be rejected on merits by the Division Bench of this Court (Coram : A.S. Oka & A.A. Sayed, JJ.) by an order dated 27.09.2016.

3. The present application is filed alleging change in circumstance and seeking parity with accused No.1-Bhanudas Kotkar, who has been granted bail by the another co-ordinate Bench of this Court (Coram : B.R. Gavai & Smt. Bharati H. Dangre, JJ) by an order dated 26.02.2018 in Criminal Application No.731 of 2017 in Criminal Appeal No.363 of 2016.

4. We have heard learned counsel for the respective parties. We have also perused the order dated 26.02.2018 passed by the Division Bench of this Court in Criminal Application No.731 of 2017 in Criminal Appeal No.363 of 2016. The said application was filed by Bhanudas S/o. Eknath Kotkar, original accused No.1. The Division Bench of this Court having considered the deposition of PW-1 and PW-2, who were eye witnesses of the incident coupled with the fact that there was 70 days delay in filing the FIR and consequently accused No.1-Bhanudas Kotkar has been released on bail. The role in the alleged incident played by accused No.1-Bhanudas Kotkar and the present applicant/accused No.12 is similar. The evidence and circumstances adduced against these two accused are also identical. In the backdrop of above circumstances, we are of the considered view that the present applicant/accused No.12 is entitled to seek parity especially when the order releasing applicant No.1 on bail by this court is confirmed by the Apex Court.

5. Mr. Gaikwad, learned counsel for the intervener tried to oppose the grant of this application on the ground that an application for cancellation of bail of accused No.1 is filed and the same is pending in this Court. The cancellation of bail is however sought on the ground that accused No.1-Bhanudas Kotkar had breached the condition of bail and has committed another offence after his release. The fact remains that the set of circumstances considered while granting bail to accused No.1-Bhanudas Kotkar and the set of circumstances alleged against the present applicant/accused No.12 are one and the similar.

6. In the light of above, we dispose of the application by passing following order.

ORDER

- i. The sentences imposed on the applicant/accused No.12-Shri. Amol S/o. Bhanudas Kotkar by the learned Additional Sessions Judge, Nashik in Sessions Case No.62 of 2014 are hereby suspended till the decision of appeal.
- ii. The applicant be released on bail on his furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount to the satisfaction of the trial Court.
- iii. The applicant shall not enter Ahmednagar District during the pendency and till the decision of appeal. The applicant shall intimate his address, where he resides, to the Kotwali Police Station, Dist. Ahmednagar and also report to the police station of the area where he would reside, on every Monday between

8.00 a.m. to 10.00 a.m.

- iv. The applicant shall not leave India without prior permission of the Court.
- v. The applicant shall give address and contact details at which he shall always be available during the pendency of appeal.
- vi. Similar details in relation to the sureties shall also be submitted.
- vii. The applicant shall not in any way directly or indirectly attempt to contact or pressurise either complainant or any of the witnesses.
- viii. The applicant shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and they shall not be entitled to any fresh notice at the stage of final hearing.
- ix. The applicant shall report to the Superintendent/Registrar of District and Sessions Court, Nashik on first working Monday of every two months.
- x. The applicant's failure to observe any of the terms and conditions of this order shall entitle the Respondent-State to take him in custody.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]