

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 1425 OF 2019
IN
CRIMINAL APPEAL NO. 1061 OF 2019**

Pradeep Vaikuntanath Pandey	...Appellant
Vs.	
The State of Maharashtra	...Respondent

- Mr. S.S. Duby, Advocate for Appellant.
- Ms. Pallavi Dabholkar, APP for the State/Respondent.

**CORAM : P.N.DESHMUKH, J.
DATE : 4th OCTOBER, 2019**

P.C. :

1. This application is filed for suspension of sentence and for bail by the accused, who is convicted for the offences punishable under Sections 367 and 307 of the Indian Penal Code and sentenced to suffer RI for ten years on both the counts and is imposed fine of Rs.5,000/-. In default of payment of fine to suffer further RI for one year.
2. Learned counsel for the applicant submitted that he is falsely involved and infact there is no corroboration to the version of injured establishing appellant's involvement in the present case, as none of the witnesses have deposed that appellant was driving taxi vehicle by which the victim is

alleged to be dragged. It is, therefore, prayed that the application be allowed.

3. Learned APP opposed the application by referring to the evidence of doctor contending that the victim had sustained fracture of skull bone and as such had received grievous injury for which he was admitted as indoor patient from 12th September 2010 to 25th September 2010 and as thus, contended that application be rejected.

4. In the background of the submissions advanced as aforesaid, evidence of PW-1, complainant is required to be discarded since he was not subjected to cross-examination since dead. Evidence of PW-3, the injured victim, is that on the day of incident of 1200 midnight, when he was returning home from Ganpati Mandal, suddenly one taxi stopped near him having passengers travelling in it and further deposited that the taxi driver dragged him with his vehicle and suddenly stopped at some distance where he fell down and sustained injury over his person.

5. From the evidence of this witness, he claims that relations between himself and taxi driver were strange as prior to this incident, he and his friends were assaulted by taxi

driver. Except from evidence of victim as aforesaid, there is no other evidence establishing appellant's involvement in the present crime as from the evidence of PW-4 Dinesh Gaud, he cannot be an eye witness since according to him, after he heard hue and cry, on his looking to that direction he saw injured lying on the ground. He has even whispered of any vehicle having found at the spot. Evidence of PW-5 is hearsay, while evidence of PW-6, Ajay Yadav, is based on the evidence of PW-4 Dinesh Gaud, who has stated as above and thus, cannot term to be as eye witness. Infact, PW-6 has admitted that he could not see any incident as same occurred on the other side of pendol and further deposed that he had learnt about the incident from public at large.

6. In the background of above evidence, since applicant's involvement is not *prima facie* established, though evidence of PW-9 Dr. Ansari establish injured had sustained grievous injuries, there is nothing to establish that appellant is author of the same.

7. In that view of the matter, application is allowed as follows:-

ORDER

1. Applicant shall be released on bail on his executing PR bond of RS. 25,000/- (Rs. Twenty Five Thousands Only) with one or two sureties in the like amount.
2. Applicant shall mark his presence with Kurar Police Station quarterly on the 1st day of each such month, pending appeal.
3. Criminal Application is disposed of.

(P.N.DESHMUKH, J.)