

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1699 OF 2018****IN****CRIMINAL APPEAL NO. 929 OF 2018**

Aslam Mukhtar Ali

.....Applicant

Vs.

State of Maharashtra

....Respondent.

Ms. Ragini Ahuja I/by Dr. Yug Mmohit Chaudhary for the Applicant.
Ms. M.H. Mhatre, APP for the Respondent-State.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 24th JANUARY, 2019.****P.C.:-**

This is an Application for suspension of sentence and for grant of bail by the Accused No.4-Aslam. The Applicant along with the co-accused have been convicted for the offences punishable under Sections 143, 149 342 and 302 read with Section 34 of the Indian Penal Code.

2 The incident is of 14th October, 2010. On the very day, the accused were arrested. The allegation against the Applicant by the prosecution is that the Applicant and other accused persons suspected that the deceased-Sufi had stolen a cell phone and therefore, they

assaulted the said Sufi. The allegation is that they assaulted Sufi by Bamboos and a big spoon. They tied him with a plastic rope. The Applicant is in custody from 14th October, 2010. Thus, the Applicant is in custody for more than 8 years.

3 The prosecution case is mainly based on the deposition of P.W No. 12-Imran, who is the only eye-witness. We have perused the evidence of P.W. No. 12. Apart from the fact that he kept quiet for a period of 2 days from the date of incident and did not report to the police, from paragraph No.12 of his deposition, we find that there are material omissions. Considering the material omissions and considering the fact that P.W. No. 12 is the only eye-witness and considering the other evidence on record, we find that this is a case where the Applicant will have to be enlarged on bail. The Applicant has already undergone sentence for 8 years and more and there are no antecedents.

4 Hence, we dispose of the Application by passing the following Order:-

- a) The substantive sentence imposed upon the Applicant-Aslam Ali (Accused No. 4) under the impugned Judgment and Order dated 9th May,

2012 passed by the learned Additional Sessions Judge, Bombay in Sessions Case No. 42 of 2011, shall stands suspended till the final disposal of the Appeal;

- b) The Applicant shall be enlarged on bail in the sum Rs.25,000/- with one or two local solvent sureties to make the amount;
- c) The Applicant shall be enlarged on bail, subject to condition of furnishing to the Jail Superintendent, the address of the place of residence where he proposes to stay after he is enlarged on bail along with his contact telephone/cell phone number;
- d) The Applicant shall be enlarged on bail, subject to further condition that the Applicant shall report to the concerned Trial Court on first Monday of the months of January and July of every calendar year at 11.00 a.m. till the final disposal of the Appeal;
- e) If there is any default on the part of the Applicant in reporting, the concerned Trial Court, shall submit a

report to the Registrar (Judicial-I) of this Court who shall place the same before the appropriate Bench;

- f) Application is disposed of in the aforesaid terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)