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

**CRIMINAL APPLICATION NO.1751 OF 2018
IN
CRIMINAL APPEAL NO. 1226 OF 2018**

Bramha Namdeo Mhatre

..Applicant

Vs

The State of Maharashtra & Anr.

..Respondents

**WITH
CRIMINAL APPLICATION NO.1813 OF 2018
IN
CRIMINAL APPLICATION NO.1751 OF 2018**

Amit Ramesh Mhatre

..Applicant

Vs

The State of Maharashtra & Anr.

..Respondents

Mr. Shrikant Shivade a/w Mr. M.S. Mohite I/b Mr. Amit P. Ghag for the Applicant.

Mr. J.P. Yagnik, APP for the Respondent No.1 State.

Mr. Pankaj D. Kavale for the Respondent No.2 in Cri.Application No.1751/2018 and for the Applicant in Cri.Application No.1813 of 2018.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 28th January 2019.

P.C.:

1] Heard the learned Counsel for the Applicant in Cri. Application No.1751 of 2018, the learned APP for the Respondent-State and the learned Counsel for the Intervener (Applicant in Cri.Application No.1813 of 2018). The applicant-Accused has prayed that grant of bail pending the final disposal of the Appeal.

2] The applicant accused is seeking bail pending the final disposal of the appeal against the Judgment and Order dated 29th September 2018. The applicant has been convicted for the offence punishable under Section 304-I of the Indian Penal Code and was sentenced to undergo rigorous imprisonment 10 years and to pay fine of Rs.2.00 lakhs.

3] The learned counsel for the applicant pointed out that the applicant was arrested on 24th April 2012 and thus, he has undergone sentence of six years, nine months and more. He pointed out that the finding recorded by the Sessions Court is that the applicant fired bullet at the deceased in a fit of anger in exercise his right of private defence, but exceeded the said right. He urged that there is no possibility of appeal

being heard in near future. Therefore, the applicant may be released on bail.

4] The learned APP for the State opposed the said application and submits that the bullet was fired at the chest of deceased. He invited our attention to the paragraph No.82 of the impugned Order.

5] The learned counsel for the applicant in Criminal Application No.1813 of 2018 submits that considering the fact that the bullet was fired at the chest of deceased, no case is made out for releasing the applicant on bail and in fact, hearing of the appeal can be expedited.

6] We have considered the submissions. As stated earlier, the defence of the applicant regarding the exercise of his right of private defence was accepted by the learned Trial Judge, but he proceeded to hold that the act of the applicant of firing bullet at the chest of the deceased exceeded the right of private defence. The said finding is in paragraph-81 of the Judgment. Therefore, the learned Trial Judge held the applicant guilty of the offence punishable under Section 304-I of the Indian Penal Code.

7] In paragraph No.91 of the impugned Judgment, the learned Judge again observed that for while exercising his right of private defence, the applicant exceeded the same. The Trial Court observed therein that the

accused has no criminal antecedents.

8] As stated earlier, the applicant has undergone sentence for six years, nine months and more. We must note the fact that large numbers of appeals against Orders of conviction wherein the accused have already undergone sentence of ten years and more are pending. Hence, this Appeal is not likely to be heard in near future. Therefore, in view of the findings recorded by the learned Trial Judge in paragraph-91 and considering the sentence already undergone, pending the final disposal of the appeal, the applicant deserves to be enlarged on bail.

9] The learned counsel for the applicant, on instructions, states that a fine amount of Rs.2.00 lakhs has been deposited by the applicant.

10] Accordingly, we pass the following Order:-

(a) Pending final disposal of the appeal, the substantive sentence imposed upon the applicant Bramha Namdeo Mhatre is hereby suspended and the applicant shall be enlarged on bail in the sum of Rs.25,000/- with one or two local and solvent sureties to make up the amount;

(b) The bail is granted to the applicant Bramha Namdeo Mhatre subject to condition of the applicant providing the concerned jail Superintendent his detailed address of the place where he intends to reside

as well as his contact phone numbers;

(c) After the applicant released from jail, he shall report to the concerned Trial Court on every 1st Monday of January and July of every calender year till disposal of the appeal;

(d) Application No.1751 of 2018 is disposed of in the aforesaid terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)