

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.2007 OF 2018
IN
CRIMINAL APPEAL NO.1484 OF 2018**

FARUKH GAFAR SHAIKH

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Hrishikesh Mundargi i/b. Mr.Madan Gupta, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th OCTOBER 2019

P.C. :

1 This is an application for suspension of sentence and releasing the appellant/convicted accused on bail during pendency of the appeal filed by him. He is convicted of offences punishable under Sections 307 and 201 of the Indian Penal Code as well as under Section 37(1) read with 135 of the Bombay

Police Act and under Section 25 read with 3 of the Bombay Police Act. For the offence punishable under Section 307 of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 7 years apart from direction to pay fine of Rs.10,000/- and in default, to undergo simple imprisonment for 6 months. Lesser punishments are imposed on other counts and all sentences are directed to run concurrently by the learned trial court.

2 Heard the learned counsel appearing for the appellant/convicted accused. He took me through evidence of PW2 Dr.Parag Warhade and PW3 Dr.Vijay Waghmare, attached to the Sassoon Hospital, Pune, and argued that cross-examination of these Medical Officers does not show that the injured had suffered injuries because of gunshot. The learned counsel also took me through the papers of medical examination as well as report of forensic examination. It is argued that Injury Certificate issued by the Sassoon Hospital shows that injured Vinayak Mane had not suffered any bullet injury but he was injured because of hard and

blunt object. Even X-ray report sent for forensic examination shows that there was no gunshot injury to injured Samarth Londhe, who, at the relevant time, was 5 years old. He argued that gunshot injury reflecting in the certificate was added later on, as seen from the certificate.

3 The learned APP opposed the application by contending that forensic evidence collected by the prosecution makes out a case of injury by firearm and for that purpose, reliance was placed by the learned APP on Examination Report at Exhibit 31. He argued that there is evidence of recovery of a firearm at the instance of the appellant/convicted accused. My attention is also drawn to evidence of PW10 Suyog Patil, Chemical Analyzer, by the learned APP.

4 I have considered the submissions so advanced and perused the material placed on record. I had given an option to the learned counsel for the appellant/convicted accused to work out the appeal, as the appeal is ripe for final hearing and paper

book is ready with the file. However, the learned counsel for the appellant/convicted accused had chosen to work out the instant application.

5 Appellant/convicted accused Farukh Shaikh was on cross terms with PW1 Nitish Patange. The incident in question allegedly took place on 4th May 2016. Evidence of PW1 Nitish Patange shows that initially the appellant/convicted accused had threatened him to kill and subsequently, he returned with a firearm. It was placed on the chest of PW1 Nitish Patange, as deposed by him. His evidence shows that his friend Vinayak Mane came to his rescue and gave a push to the appellant/convicted accused. That resulted in one accidental fire towards the sky. Then, PW1 Nitish Patange deposed that the appellant/convicted accused fired a bullet at Vinayak Mane and that bullet caused injury at right palm of Vinayak Mane. It also hit a 5 years old boy Samarth Londhe, who was playing nearby.

6 Certificate at Exhibit 9 proved by PW3 Dr.Vijay Waghmare shows that Samarth Londhe had suffered grade III compound on left upper $1/3^{\text{rd}}$ portion of the leg. So far as Vinayak Mane is concerned, he suffered injury on his palm.

7 One empty and one deformed copper jacketed bullet came to be seized from the spot. On the basis of voluntary disclosure statement of the appellant/convicted accused, in presence of panch witness PW5 Balasaheb Gaikwad, the pistol came to be seized vide Recovery Panchnama. The empty as well as deformed copper jacketed bullet were sent for forensic examination along with the pistol recovered from the appellant/convicted accused. Report of Forensic Expert at Exhibit 31 shows that the deformed copper jacketed bullet was fired from the recovered pistol and the empty was also fired from the said pistol.

8 Medical evidence in respect of injuries suffered by two persons in the incident, prima facie, does not show that injuries

were caused by firearm but position of law is to the effect that ocular evidence always prevails over the medical evidence. In the case in hand, PW1 Nitish Patange has deposed about use of firearm for causing injuries to the victims, who, unfortunately, could not be examined in this case, as injured Vinayak Mane passed away during trial whereas another injured victim was a 5 years old boy.

9 Intention coupled with overt act is required for making out the offence punishable under Section 307 of the Indian Penal Code. Causing any injury is not at all relevant. Choice of weapon gives hint about the intention. Hence, at this stage, without appreciation of evidence, it is not possible to hold that the appellant/convicted accused was not harbouring the requisite intention to make out the offence punishable under Section 307 of the Indian Penal Code.

10 The application is devoid of merits and therefore the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)