

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2037 OF 2018

IN

CRIMINAL APPEAL NO.5 OF 2019

VISHWAS SOPAN MANDALE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.M.B.Deshmukh, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd JANUARY 2019

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted of the offence punishable under Section 307 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.5,000/- and default sentence.

2 The learned counsel appearing the applicant/accused has taken me through the entire judgment. The learned counsel has argued that evidence of injured PW6 Chandani and that of alleged eye witness PW3 Ganesh has remained uncorroborated. Both of them are interested witnesses. Presence of PW3 Ganesh on the scene of occurrence is highly doubtful. The learned counsel further argued that evidence adduced by the prosecution is to the effect that after assault on the injured, the applicant/accused ran away from the spot of the incident. However, at the same time, the prosecution is adducing evidence that on the basis of voluntary disclosure statement of the applicant/accused, recovery has been effected from the scene of occurrence itself. Weapon of offence is allegedly recovered from under the hay stack near the spot of the incident. This makes prosecution case suspect. The learned counsel further argued that during pendency of the trial, the applicant/accused was on bail. It is further argued that though it is alleged that assault was by an axe, injuries found on the victim were not caused by a sharp edged weapon. Full

sentence is imposed on the applicant/accused and therefore, he is entitled for bail.

3 The learned APP opposed the application.

4 This is a case of single injured and single accused. When the case is that of a single accused and single injured, theory of false implication does not deserve a moment's consideration. Evidence of injured PW6 Chandani reflects that applicant/accused, who is her husband, had dialogue with her and thereafter the assault followed. Therefore, the question of mistaken identity when the incident took place at 11.00 a.m. of 15th September 2010 cannot be there.

5 The injured was examined by PW5 Dr.Rahul Dewdkar. Following are the injuries noted by this Medical Officer on person of the injured :

- 1) CLW over back of neck transverse. Suspected vertebra fracture and trans section of spinal cord. Dimensions of the injury were 8 cms. x 3

cms x bone deep.

- 2) CLW over right mandible region admeasuring 4 cms. x 2 cms. bone deep
- 3) CLW over back of inter-scapular region admeasuring 3 cms. x 1 cm x skin deep.
- 4) CLW over right deltoid region admeasuring 2 cm. x 1 and ½ cm. x skin deep
- 5) CLW over left forearm admeasuring 15 cm. x 4 cm. x bone deep.”

6 For making out the offence punishable under Section 307 of the Indian Penal Code, what is required to be proved is intention coupled with some overt act. Intention can be gathered from the weapon used, force applied as well as part of the body chosen for causing wound.

7 Considering all these aspects, no case for bail is made out.

The application is, therefore, rejected.

Hearing of the appeal is expedited.

(A. M. BADAR, J.)