

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2 OF 2020
in
CRIMINAL APPEAL NO. 163 OF 2020**

Firoz Abdul Sakur Khan

....Applicant/
Org.Accused No.1

Versus

The State of Maharashtra

....Respondent

Mr. S. V. Marwadi along with Mr. N. M. Nadar, advocate for the applicant.
Mr. V. B. Konde-Deshmukh, APP for the State.

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 15th OCTOBER, 2020.

P.C. :

1. Heard Mr. Marwadi, learned counsel for the applicant and Mr. Konde-Deshmukh, learned APP for the State.

2. By way of the present application, the applicant is before this Court with a prayer for his enlargement on bail during the pendency of the appeal. Needless to state that being aggrieved by the judgment and order of conviction and awarding sentence to the applicant, who was the original accused before the Trial Court, the appeal is preferred and the same is admitted.

3. Mr. Marwadi, learned counsel for the applicant, vehemently

submitted that the case lodged against the applicant is a case of no evidence at all. It is also the submission of the learned counsel that initially the case was in respect of a road accident. Then it is submitted by the learned counsel for the applicant that the so called evidence postulated against the accused is only in the nature of circumstantial evidence and there are so many missing links so as to complete the chain of circumstances. Thus, it is the submission of Mr. Marwadi, learned counsel, that the learned trial Court committed a serious error in appreciation of the evidence. Apart from his oral submission, Mr. Marwadi, learned counsel, invited our attention to the written note of submissions presented today. The written note of submissions runs into four pages. The sum and substance of the submission orally advanced before us and the written submissions presented before this Court is of re-appreciation of the evidence. An attempt was also being made by learned counsel for the applicant to indicate that the evidence in the form of CCTV footage or in the form of recorded conversation is not sufficient enough to show the complicity of the applicant. It is also submitted by the learned counsel for the applicant that there is no evidence supporting the presence of the accused at the scene of crime. Now again, all these submissions are re-appreciation of the evidence which was presented before the trial Court in the form of oral testimony of witnesses and other documentary evidence.

4. The prosecution, in support of its case, has examined as many as 17 witnesses on various aspects. It was also an attempt of the learned counsel for the applicant to submit before this Court that the applicant is entitled for his release on bail in view of the ground of parity. Mr. Marwadi, learned counsel for the applicant submitted that other accused persons, by presenting their respective applications, had sought enlargement on bail and those applications were allowed.

5. As stated above, the submissions of Mr. Marwadi, learned counsel for the applicant, are in the nature of appreciation of evidence and the same is not possible at this stage. Such an exercise of assessment of evidence or thorough or deep scrutiny of evidence would be possible only at the stage of hearing of the appeal finally.

6. The second limb of the submission of learned counsel for the applicant i.e. the ground of parity is concerned, we are not inclined to accept the same for the simple reason that it is not case that all the accused persons played an identical role in the commission of the offence. Needless to state that the role attributed to the accused persons is of different nature. That apart, though the application of other accused/applicants were considered by this Court, it is needless to state that in a criminal matter, the role played by the offender is an important and relevant factor and as such, considering this very fact qua the role

played by the applicant in the offence in the present matter, we are unable to accept the submissions of the learned counsel on account of the ground of parity also.

7. It was also submitted by the learned counsel for the applicant that it will take a considerable length of time to hear the appeal and the applicant is behind the bars for a period of more than 5 years. Needless to state that the appeal is filed recently i.e. the appeal is of the year 2020 and there are old pending appeals in this Court awaiting the hearing and final disposal, therefore, we see no such ground so as to treat the case of the present appellant as a special case and to provide a priority treatment to the appellant who has filed the appeal recently i.e. in the year 2020.

8. Resultantly, we are unable to find any merit in the application. Accordingly, the application is dismissed.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)