

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL INTERIM APPLICATION NO.1 OF 2020
IN
CRIMINAL APPEAL NO.19 OF 2020**

NARESH @ RAKESH CHANDRAKANT)
KOTIWALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Amrish Salunke a/w. Mr.Jigar Agarwal, Advocate, for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

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

DATE : 8th SEPTEMBER 2020

P.C. :

1 Heard the learned counsel Mr.Amrish Salunke appearing
with Mr.Jigar Agarwal for the applicant/appellant. By the present
application, the applicant/appellant prays for his enlargement on

bail. The applicant/appellant was an accused in a criminal case registered at Ghatkopar Police Station vide Crime No.172 of 2013, and on conclusion of trial, the present applicant/appellant, along with other six accused, is convicted and sentence is awarded to him. The appeal presented by the appellant challenging the judgment and order recording conviction and awarding sentence is admitted.

2 The learned counsel for the applicant/appellant vehemently submitted that the learned trial Court committed serious error in appreciating the evidence and proceeded as if the applicant/appellant is the main culprit, whereas, the entire evidence brought before the court shows that the applicant/appellant was only in company of the main culprit accused and had no knowledge about the intentions of the main culprit. The learned counsel for the applicant/appellant, by inviting out attention to the order of this court dated 12th January 2015, submitted that, the application viz., Bail Application No.2076 of 2014, was submitted in this court by the present

applicant/appellant post filing of the charge-sheet and the learned Single Judge of this court, while considering the entire evidence in the form of charge-sheet, found that there was no reason to keep the applicant/appellant behind bars. The learned counsel for the applicant/appellant then invited our attention to the contentions submitted before the learned Single Judge and the observation of the learned Single Judge, more particularly, in paragraphs 6, 7 and 8. We may reproduce these observations for ready reference :

“6 The learned counsel thus contended that even accepting that the applicant was accompanying the other accused, there is paucity of material denoting that the applicant was entertaining a common object as canvassed by the prosecution. It is submitted that there is also paucity of the material to come to a conclusion that the applicant was knowing that the weapon like knife was to be used in the said incident. The learned counsel contended thus considering the material as available against the applicant, he can not be said to be entertaining or sharing a common object

to commit murder of the deceased. It is submitted that even giving concession to the prosecution, the said material would not transcend beyond the applicant entertaining a common object of assaulting the deceased.”

“7 It is further submitted that there is paucity of material in the charge-sheet of the applicant possessing a motive to kill the deceased. The learned counsel for the applicant thus contended that the case of the applicant stands on much lower pedestal than the other accused who had assaulted the deceased and the injuries caused by them to the deceased resulting in his death.”

“8 The careful perusal of the material in the charge-sheet prima facie supports the submissions canvassed. The role played by the applicant is not denoting in an F.I.R. and the same apparently reveals from the statement of Babu and the statements of other

witnesses. Even the said account does not reveal that the applicant was armed with a weapon which could have caused the injuries and/or the one which is resulted in the death of the deceased. Apparently there is absence of material denoting that the applicant was aware of his companion being armed with lethal weapon like knife. The material in the charge-sheet also supports the submission of learned counsel that it was a sudden incident occurred when the parties have came across on the road.”

3 The learned counsel for the applicant/appellant then submitted that, on the earlier occasion, when the applicant/appellant was enlarged on bail pending trial, the applicant/appellant had followed all the conditions imposed on him and had not misused the liberty granted to him. The learned counsel, then, submitted that, it will take sufficient time for hearing of the appeal and when this court, post filing of the charge-sheet, allowed the application of the applicant, the

applicant/appellant be enlarged on bail pending appeal before this court.

4 The learned APP opposes the application.

5 On perusal of the material placed before this court and, more particularly, in view of the observations of the learned Single Judge reflected in the order dated 12th January 2015 in Bail Application No.2076 of 2014, we find considerable merit in the submissions of the learned counsel. It is also not disputed by the learned APP that the applicant/appellant had misused the liberty granted to him and followed the directions / conditions imposed upon him vide order dated 12th January 2015. It is also not in dispute that the role attributed to the applicant/appellant is of use of a spanner for giving blow to the victim and the fact remains that the death of the victim is a result of a knife injury and that particular weapon was carried by another accused and not by the present applicant/appellant.

6 Considering the above referred facts, we are of the opinion that the learned counsel for the applicant/appellant made out a case for allowing the application. Therefore the order :-

ORDER

- i) The application is allowed.
- ii) The applicant is enlarged on bail on his executing PR.Bond in the sum of Rs.50,000/- and on furnishing 1/2 surety/s in like amount with a condition to provide his residential address and his phone number as well as residential address of his close relatives along with their mobile numbers to the concerned Police Station and to attend the concerned Police Station once in a month and maintain a diary of his attendance duly countersigned by the Police Station Officer of the concerned Police Station.
- iii) The attendance to the Police Station is till hearing of the appeal by this court finally.
- iv) The application is, accordingly, disposed off.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)

Arti V.
Khatate

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by Arti V.
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