

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

**INTERIM APPLICATION NO.1220 OF 2021
IN
CRIMINAL APPEAL NO.795 OF 2019**

Salman @ Salman Mohara Nadeem Shaikh ...Applicant

V/s.

The State of Maharashtra ...Respondent

Ms.Payoshi Roy i/b Dr. Yug Mohit Chaudhary for the Applicant
in IA No.1220 of 2021.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 8 July 2021

P.C.

. The Applicant has filed the Criminal Appeal challenging the conviction and sentence passed by the Sessions Court, Dindoshi dated 31 January 2018. The Appeal is admitted. The Application for bail is pending hearing of the Appeal.

2. As per prosecution case on 27 August 2013, PW-8 Reshma Abdulla Shaikh heard a commotion and saw that the deceased was being assaulted by someone. PW-1 and PW-2 arrived on the spot and, according to the prosecution story, they saw that the deceased was being assaulted by four sons of accused

No.5 Yasmeen @ Masum, namely Rustom, Nazir, Salman and Ammu accompanied by two unidentified persons who were covering their faces by a handkerchief. When the deceased was taken to the hospital he informed the PW-1 and PW-2 that on the instigation of accused No-5 her sons Ammu, Rustom, Salman and Nazir with two unknown persons assaulted him by deadly weapons. The applicant was arrested on 24 September 2013. A recovery was made of blood stained clothes and a knife. PW-1 identified the applicant in Test Identification Parade held at Thane Jail on 21 September 2013.

3. The learned counsel for the Applicant submitted that the Applicant is not named by the eyewitnesses and there is no evidence as regards the identity of the Applicant. Prima facie the evidence at the Test Identification Parade is doubtful. The learned APP opposed the bail application.

4. As per the prosecution story, based on the evidence of PW-1 and PW-2, four accused Rustom, Nazir, Ammu and Salman were named as sons of the Accused No.5 Yasmeen. As regards the Applicant reference is of one of the two unknown assailants who PW-1 identified on 22 December 2013. This witness admitted in the cross-examination that he knows the present applicant for almost four to five years. If the case of the prosecution is that the Applicant could not be identified because

he covered his face with an handkerchief then the Test Identification Parade held on 28 December 2013 becomes doubtful. The present Applicant was arrested almost a month after the incident in spite of the fact that the PW-1 knows the present applicant for 4 to 5 years as admitted by him. The recovery which was made on 30 September 2013 was from an open place, as contended by the Applicant, and the blood group on the clothes as well as knife has remained inconclusive.

5. Considering that as regards there is serious doubt about the identity and the Applicant is in jail since he is arrested on 24 September 2013, for more than seven years and the Appeal is not likely to come up for hearing immediately, case for grant of bail is made out. The Application is accordingly allowed.

ORDER

- (i) The Applicant shall be released on bail on execution of P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Sessions Court.
- (ii) The Applicant will remain present before this Court as and when directed.
- (iii) Bail bonds to be furnished before learned Sessions Judge.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)