

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 922 OF 2019
IN
CRIMINAL APPEAL NO. 827 of 2019**

Inqalab Iqlakh Shaikh

....Applicant/Appellant

Versus

The State of Maharashtra and anr.

....Respondents

Mr. Ramprasad Vishwanath Gupta, advocate for the applicant/appellant.

Mrs. M. M. Deshmukh, APP for the State.

Mr. Amit Mane, advocate for respondent No.2 (Appointed through Legal Aid Services Authority).

**CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.**

DATE : 17th MARCH, 2021.

P.C. :

1. Heard learned counsel for the applicant.
2. By our order dated 3rd February, 2021, learned counsel for the applicant was permitted to amend the application by adding respondent No.2 to whom the compensation was awarded by the trial Court. By order dated 3rd March, 2021, learned counsel for the applicant/appellant was directed to deposit the amount of compensation and fine as directed by the trial Court. Today, learned counsel for the applicant invited our attention to the copies of the receipt to submit that the amount of fine to the tune of Rs.10,000/- and an amount of Rs.30,000/- towards

compensation is deposited in the trial Court. The photostat copies of the receipts are taken on record and marked "X" collectively for identification.

3. Now, coming to the application, learned counsel for the applicant vehemently submitted that the prosecution case rests on circumstantial evidence and the major circumstance alleged against the applicant/appellant is only in the form of last seen theory. It is the submission of the learned counsel for the applicant that the witnesses on the point of last seen theory are not supporting the case of the prosecution and there are certain omissions in their version. It is also the submission of learned counsel for the applicant that the prosecution failed to establish any motive behind the crime. Learned counsel, then, submitted before this Court that the applicant was enlarged on bail during the trial by imposing certain conditions on the applicant. It is, then, submitted by the learned counsel that the applicant did not misuse the liberty granted to him and there is nothing on record to show that the applicant committed breach of any condition imposed upon him.

4. Ms. Deshmukh, learned APP for the State, opposed the application.

5. The grounds raised by the learned counsel for the applicant, even if collectively considered or independently considered, they lead to

assessment and appreciation of evidence. Even if assuming the submission of learned counsel for the applicant and not admitting at this stage that the only circumstance against the applicant is last seen theory, to consider this evidence, an in-depth assessment and appreciation of evidence is necessary. Now, it is not in dispute that such an exercise of in-depth assessment of evidence can be done at the stage of hearing the appeal finally on merits. The appeal presented in this Court at the instance of the applicant/appellant is of the year 2019. There are certainly old appeals pending for hearing/consideration waiting for their turn.

The last ground raised by the learned counsel for the applicant that the applicant was enlarged on bail during the trial. Certainly while considering the prayer for bail during the trial, the considerations are different. The learned trial Court recorded finding against the applicant about his guilt and this finding is recorded by the trial Court on assessment of the evidence, in the form of version of witnesses, medical evidence in the form of P.M.Report proved through PW – 5 – Dr. Gaikwad, the articles found on the spot, a pillow, a bed-sheet (Solapuri Chaddar) and a mat. All these articles were having blood stains and also there was a hammer smeared with blood.

Thus, in our opinion, the application is devoid of any merit and deserves to be rejected and the same is, accordingly, rejected.

6. The applicant is at liberty to pray for expediting the appeal if there is a change in the situation.

7. All concerned will act on production by fax or email of a digitally signed copy of this order.

(SURENDRA P. TAVADE, J.)

(PRASANNA B. VARALE, J.)