

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1994 OF 2021
IN
CRIMINAL APPEAL NO.831 OF 2018
WITH
CRIMINAL APPEAL NO.60 OF 2019

Amir Mohammad Shaikh	..	Applicant/ Appellant
v/s.		
The State of Maharashtra	..	Respondent.

Ms. Payoshi Roay with Ms. Chandani Chawla i/b. Dr. Yug Mohit Chaudhary, for the Applicant/ Appellant.
Mr. Arfan Sait, APP for the Respondent-State.

**CORAM: PRASANNA B. VARALE AND
N. R. BORKAR, JJ.
DATE : 1st SEPTEMBER, 2021.**

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Heard learned Counsel for the Applicant and learned APP for the Respondent-State.

2 By the present application, Applicant – Amir Mohammad Shaikh- Accused No.1 in Sessions Case No.326 of 2015 and the Appellant in present Appeal No.831 of 2018 has prayed for his enlargement on bail pending appeal.

3 Learned Counsel Ms. Roy invited our attention to the material placed on record along with application in the form of a copy of deposition of witnesses - copy of the statement of the accused under section 313 of Cr. P. C. as well as copy of Post Mortem report.

4 Ms. Roy, learned Counsel also invited our attention to the order of this Court passed by the Division Bench dated 29th September, 2020 in Interim Application No.2416 of 2020 in Appeal No.60 of 2019, releasing other co-accused on bail.

5 Ms. Roy, learned Counsel submitted that it is the case of the prosecution itself that the deceased was armed with knife. Learned Counsel then invited our attention to the copy of the deposition of PW-4 Sadik Abdul Kadar Bagwan, the Investigating Officer. PW-4 firstly admitted in his Examination-in-Chief that on 12th April, 2015, the statement of two eye witnesses namely – Yusuf Qureshi and Mohammad Yusuf Sayyed were recorded by him and he further admitted in the Cross Examination that it revealed during the course of investigation that deceased Kalu had sexually assaulted applicant's wife Fatima. It is submitted by Ms. Roy that in spite of recording statement of eye witnesses Yusuf Qureshi and Mohammad Yusuf Sayyed for the reasons best known to the prosecution, the prosecution fails to examine both the eye witnesses.

6 Ms. Roy, learned Counsel then submitted that Applicant took a specific plea of self defence and on perusal of statement under Section 313 will show that when the Applicant went to the house of the deceased for making an enquiry with him about his ill behaviour, the deceased came with weapon knife and attacked on the Applicant, causing injuries to him. It is also submitted that even the case of prosecution as it stands would not attract a serious offence under Section 302 of the I. P. Code and the Applicant would be in the position to show that his case falls under exception. It is submitted by Ms. Roy, learned Counsel that Applicant is behind bar

for more than six years and considering the pendency of old appeal, the present appeal is not likely to be taken up for hearing.

7 *Per Contra*, the learned APP vehemently opposed the submissions made by learned Counsel appearing for the Applicant. It is submitted by learned APP that Applicant was an aggressor and the post mortem report will show that Applicant with full force caused the injury to the deceased, resulting in his death. Thus, the learned APP prays for rejection of the application.

8 PW-4 has admitted in the Cross Examination that eye witnesses Yusuf Qureshi stated before him that deceased Kalu brought knife from his house and assaulted Applicant. Then similar fact is reiterated by another witness Sultan Mali.

9 On going through the material placed on record couple with the statement under Section 313 of Cr. P. C., we are of the opinion that the case is made out for allowing application. There is also merit in the submission of Ms. Roy that the present appeal is of year 2018 and it is not likely to be taken up for hearing on the back drop of other old appeals pending for hearing in this Court.

10 Hence, the Applicant – Amir Mohammad Shaikh be released on bail during the pendency of the present appeal on the following conditions:-

- (i) The Applicant- Amir Mohammad Shaikh be released on execution of P. R. bond in the sum of Rs.25,000/- with solvent surety in the like amount;

(ii) The Applicant shall undertake that he shall continue to reside at the address, to be communicated by him during the pendency of the present proceeding and he shall not leave that address;

(iii) The Applicant shall not contact either complainant or any of the witnesses or their family members and shall not indulge in any unlawful activities;

(iv) The Applicant shall report to Mumbra Police Station on every 15th day of the month and maintain a diary of his attendance duly counter-signed by the In-charge officer of the police station or Senior Police Inspector of Mumbra Police Station, whatever the case may be;

(v) Failure to comply with these terms and conditions or to obey the same, shall constitute breach of this order and the Trial Court shall, in that event, proceed to take him in custody in accordance with law.

11 The Criminal Application is accordingly allowed and disposed of.

(N.R.BORKAR, J.)

(PRASANNA B. VARALE, J.)