

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8 OF 2021
IN
CRIMINAL APPEAL NO. 228 OF 2016**

Sujit Vitthal Sutar

....Applicant/
Org.Accused No.4

Versus

The State of Maharashtra

....Respondent

Mr. Sanghraj D. Rupwate i/by Ms. Pooja Thakur, for the Applicant.
Mr. H.J. Dedhia, APP, for the Respondent – State.

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

DATE : 8th JANUARY, 2021.

P.C. :

1. Heard Mr. Rupwate, learned counsel for the applicant and Mr. Dedhia, learned APP for the respondent-State.

2. By way of present application, the applicant-original accused No.4, prayed for his enlargement on bail pending criminal appeal No.228 of 2016. Needless to state that the criminal appeal No. 228 of 2016 is preferred by the applicant/appellant challenging the judgment and order of the Trial Court in Sessions Case No.144 of 2011 whereby the present applicant along with other accused was awarded conviction and sentence by the Trial Court for offences punishable under sections 143, 147, 148, 149, 307, 342,302 read with sections 149, 336 read with section 149 of the Indian Penal Code, 1860.

3. The learned counsel for the applicant invited our attention to the material placed on record viz. copy of depositions of the witnesses and more particularly the orders of the Division Bench dated 5th April, 2019, 6th August, 2019 and 4th October, 2019 and submitted before this Court that though there are allegations of active involvement of the applicant who can said to be similarly circumstanced with accused No.2, considering the material, the Division Bench of this Court was pleased to allow criminal application No. 925 of 2018. It is also submitted by the learned counsel for the applicant that there is merely an allegation against the applicant/appellant that he was armed with fire arms but the material evidence falls short to establish any active involvement of the applicant in causing bodily injury to the deceased. It is also submitted by the learned counsel for the applicant that the applicant is behind bars for more than 10 years and considering the pendency of the appeals, it will take considerable longer period for hearing of the appeal filed by the present applicant/appellant. Thus, the learned counsel for the applicant, raises the ground of parity. Mr. Dedhia, learned APP for the State, opposed the application.

3. On going through the order of the Division Bench dated 5th April, 2019, in criminal application No.925 of 2018, it reveals that the Division Bench was pleased to observe that the material against the applicant/original accused No.2- Ravichand @ Raja Madanchand Thakur

is in the form of alleged obstruction by the applicant and the testimony of the injured witness is that two persons opened fire by means of fire arms and in the cross-examination, the witness accepted that he saw the accused in the Court of the first time. Thus, the application was allowed by the Division Bench by its order dated 5th April, 2019.

4. By criminal application No. 1980 of 2018, the original accused No.7-Nitin Pandurang Vaiti also prayed for his enlargement on bail. While allowing the criminal application No. 1980 of 2018 by an order dated 6th August, 2019, the Division Bench was pleased to observe that the accused No.2 who is claimed to have played a more serious role was released on bail on 5th April, 2019. Ultimately, the application of the original accused No.7-Nitin Pandurang Vaiti was also allowed and by an order dated 4th October, 2019, the application for bail preferred by original accused No.6-Raja @Rajesh Bhalchandar Gavari is also allowed.

5. Now considering the material placed on record, it can safely be said that the role attributed to the present applicant is more or less similar to the role attributed to original accused No.2- Ravichand @ Raja Madanchand Thakur. The Division Bench allowed his application and also took into consideration the fact that the applicant had put in more than 8 years in the prison and there is no likelihood of the appeal being heard in near future.

6. The other grounds raised in the application also needs some consideration viz. the mother of the applicant is in her advanced age i.e. 70 years of age and ailing and there is no adult member in the family except the applicant to support and take care of his ailing mother. A specific statement is made in the application that the applicant is a bachelor and is residing with his aged mother.

7. The material placed on record further shows that the criminal application No. 1411 of 2016 submitted at the instance of original accused No.6 – Raja @ Rajesh Bhalchandar Gavari is allowed by an order dated 4th October, 2019. The allegation against the applicant/ original accused No.6 – Raja @ Rajesh Bhalchandar Gavari is that he reached the spot along with accused Nos. 1, 3, 4 and 5 and he was carrying iron rod. It is also come in the evidence that the accused No.3 used hammer and accused Nos. 3 to 6 used iron rods to break the glasses of the Scorpio Jeep and caused damage to the said jeep, in which, the deceased and eye-witnesses were travelling.

8. Perusal of the depositions show that the version of some of the witnesses is in the form of hearsay evidence and they are not the eye-witness to the actual incident.

9. Considering all the above referred facts, we are of the opinion that the learned counsel for the applicant has made out a case for

allowing the application. Hence, the applicant be released on bail during the pendency of the present appeal on the following conditions:-

- I. The applicant be released on bail of Rs.25,000/- with two solvent sureties 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 or business.
- IV. The applicant shall report to Airoli Police Station on every 1st and 15th day of the month and maintain diary of his attendance duly countersigned by the Police Station In-charge or Senior Police Inspector of Airoli Police Station.
- V. The terms and conditions of this order shall be complied within three weeks from today.
- VI. 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 the event proceed to take him in custody in accordance with law.

10. The criminal application is, accordingly, allowed and disposed of.

11. 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.)