

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

**INTERIM APPLICATION NO. 1753 OF 2019
IN
CRIMINAL APPEAL NO. 1745 OF 2019**

**SNEHA
NITIN
CHAVAN**

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Vishal Ganesh Kasbe

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Aniket Vagal i/b B.A. Aloor for the Applicant.

Mrs. P.P. Shinde, APP for the Respondent/State.

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

DATE : 31 AUGUST 2021

P.C.

. By this application, the Applicant (Accused No.2) is seeking an order of suspension of sentence and for release on bail. The Applicant along with four others were tried for the offence punishable under Section 302, 120-B r/w Section 34 of I.P.C. for having intentionally caused the death of Bablu alias Jitendra Gaikwad. It appears that Ghodya alias Suraj Sugreev (Accused No.3) and Lalya alias Kishor Waghmare (Accused No.4) died during the pendency of trial and the trial against them had abated.

2. The learned Sessions Judge, Pune by a Judgment and Order dated 23 October 2019 in Sessions Case No. 751 of 2013 has convicted the Applicant and Accused No.1 Lallya Dadar for the offence punishable under Section 302 read with Section 34 of I.P.C. they have been sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- each and in default to suffer simple imprisonment for three months.

3. We have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, we have gone through the record.

4. The learned counsel for the Applicant pointed out that out of three witnesses namely Laxmi Gaikwad, Deepak Kamble and Shobha Sarkal, who claimed to be eye witnesses, the prosecution has not examined Shobha Sarkal. It is submitted that the evidence of Laxmi Gaikwad and Deepak Kamble is also not acceptable to show the involvement of the present Applicant in the offence. It is submitted that PW-4 Deepak Kamble has not supported the prosecution on the point of alleged disclosure made by the deceased while he was being taken to the hospital in his auto rickshaw. It is submitted that the Applicant was on bail during the course of the trial and he be released on bail.

5. The learned APP has submitted that the offence is serious and the evidence of prosecution witnesses Laxmi Gaikwad and

Deepak Kamble is sufficient to show the involvement of the present Applicant in the offence.

6. We have considered the circumstances and the submissions made. It *prima facie* appears from the evidence of PW-3 Laxmi Gaikwad that she had noticed the deceased lying in an injured condition at Shivraj Square and she had carried the deceased in the auto rickshaw of PW-4 Deepak Kamble to Sassoon Hospital. She claimed that when she and Shobha Sarkar had inquired with the deceased, the deceased told that it was the Applicant who had caught hold of him and the Accused No.1 Lallya Dadar assaulted him by knife on his stomach. *Prima facie*, there is evidence about such oral declaration being made by the deceased to PW-3.

7. It is further necessary to note that the learned Sessions Judge in the course of the evidence of PW-3 has recorded that the Applicant had threatened the witness during the trial and police had taken him in custody and an offence was registered against him. The learned APP on the basis of the said record submitted, and to our mind rightly so, that there is material to show that the Applicant had misused the liberty when granted. The Applicant has been convicted of a capital offence and considering the overall circumstances and further having regard to the fact that there was an attempt to threaten the witness which would indicate an attempt to misuse the liberty when granted, we are not inclined to exercise discretion in favour of the Applicant.

8. In the result, the application stands rejected.

(C.V. BHADANG, J.)

(NITIN JAMDAR, J.)