

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.2665 OF 2022
IN
CRIMINAL APPEAL NO.19 OF 2021**

Javed Karim Shaikh	..Applicant
Vs.	
The State of Maharashtra	..Respondents

Mr.A.D.Ostwal, Advocate for applicant
Mr.R.V.Dasalkar, APP for respondent

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.
DATE : NOVEMBER 11, 2022**

ORDER :-

This is an application under Section 389 of the Code of Criminal Procedure. The applicant was one of the accused in Sessions Case No.411 of 2016. He has been convicted for the offence punishable under Section 302 read with Section 120-B of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay a fine with default stipulation.

2. Heard learned counsel for the parties. Perused the impugned judgment and the evidence relied on.

3. One Himmat Jadhav (deceased) was shot dead on 13.09.2016, while he was proceeding on motorbike by Ahmednagar-Aurangabad road. The deceased was riding pillion. On investigation of the crime, seven persons including the applicant herein, came to be prosecuted. All of them have been convicted as well.

4. The case is based on circumstantial evidence. Original accused nos.1 to 3 (convicts) were alleged to have shot Himmat Jadhav dead. Admittedly, the applicant was not in the company of the assailants at the material time. The case of the prosecution was that the present applicant was in continuous contact with the assailants. He was monitoring the movement of the deceased and supplied information in that regard to the assailants. He is also alleged to have had given his premises to the assailants to stay therein.

5. The only material against the applicant was in the nature of the disclosure statement made by him, pursuant to which a cell phone came to be recovered. The cell phone is alleged to have been used by the applicant to stay in contact and pass on the relevant information to the assailants.

6. PW 6, panch witness in whose presence the cell phone is said to have been seized from the applicant, did not stand by the prosecution. The Police Officer, who recorded the disclosure statement of the applicant, pursuant to which the cell phone came to be seized, was not examined. It is also stated that the I.M.E.I. number of the handset did not match with the I.M.E.I. number in the C.D.R. The SIM cards allegedly used by the applicant were in the names of some other persons, such as, Narayan Waghmode, Pyaresaheb Shaikh and Shankar Sathe, etc. Those persons are stated to have not been examined. The person, whose motorbike is alleged to have been used by the applicant, did not stand by the prosecution. The witness denied to have ever given the applicant his motorbike.

7. Admittedly, the applicant is alleged to have been a privy to the conspiracy to commit murder of Himmat Jadhav. The others three, who were alleged to have been privy to the very conspiracy, have been granted suspension of execution of the substantive sentence imposed against them. The applicant has every reason to claim similar relief on parity. He is behind the bars close to five years. The appeal is not likely to come up for hearing in the near future.

8. In the facts and circumstances of the case, we are inclined to allow the application. Hence, the following order:-

(i) The application is allowed;

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed by learned Addl. Sessions Judge, Ahmednagar, vide order dated 11.11.2020 in Sessions Case No.411 of 2016, to stand suspended. The applicant be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

[R. M. JOSHI, J.]

[R.G. AVACHAT, J.]

KBP