

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

961 CRIMINAL APPLICATION NO.1306 OF 2022

IN

CRIMINAL APPEAL NO.592 OF 2021

SALMAN @ SALIM RAFIQ KURESHI

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant: Mr. Qureshi Aqif Hameed

APP for Respondent: Mr. S. J. Salgare

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WITH

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961 CRIMINAL APPLICATION NO.2140 OF 2021

IN

CRIMINAL APPEAL NO.460 OF 2021

SADDAM S/O MAKSUD QURESHI

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant: Mr. Rajendraa Deshmukh,

Senior Advocate a/w. Mr. Govind A. Kulkarni i/b.

Mr. D. R. Deshmukh

APP for Respondent: Mr. S. J. Salgare

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CORAM: SARANG V. KOTWAL &

BHARAT P. DESHPANDE, JJ.

DATE: 05th JULY, 2022

PER COURT:

1. Both these applications are decided by this common order because they arise out of the same sessions trial. Both these applicants have preferred separate appeals which are already admitted. These applications are for grant of bail

during pendency of their appeals. Wherever necessary, the applicants are mentioned by their names. Applicant Salman was the original accused no.1. He has filed Criminal Appeal No.592 of 2021. He was not on bail during trial. His bail application is Criminal Application No.1306 of 2022. Accused No.2 Saddam has filed Criminal Appeal No.460 of 2021. His bail application is Criminal Bail Application No.2140 of 2021. He was on bail during trial.

2. Heard learned Counsel for the respective parties.

3. The prosecution case is that, on 11.02.2015, at about 12:30, pm both the accused came near the spot of incident on their motorcycle. It is alleged that the accused Saddam gave a blow with stick to Hyder and Salman stabbed him on his abdomen with knife. After that, both of them went away. The injured was taken to hospital. He died on 12.02.2015 at 03:00 PM. The F.I.R. was lodged by Hyder's father Shaukatali. The

investigation was carried out. Both the applicants were arrested. They faced the trial. Salman was accused no.1 and Saddam was accused No.2. During trial the main witnesses were PW-2 Shaukatali, PW-3 Gaus Shaikh and PW-4 Liyakatali. PW-3 and PW-4 were the eye witnesses. The postmortem notes were exhibited through the evidence of Dr.Snehal Nadgire. The deceased had suffered one stab injury on his abdomen and the cause of death was mentioned as 'death due to Hypovolumic and Septicemic shock due to stab injury over left side of abdomen'.

4. Learned Counsel for the applicants submitted that the the statements of the eye witnesses are not believable. The police statement of the PW-3 was never recorded . He deposed for the first time before the Court after 4 years. PW - 4 has given contrary version in his deposition from that, which is mentioned in the police statement. Shaukatali - the father has referred to an oral dying declaration which was not mentioned

in the F.I.R. lodged by him. The recovery at the instance of both the accused was from open spaces and therefore it is not an incriminating circumstance.

5. Learned APP on the other hand relied on the same pieces of evidence to oppose these applications. He submitted that there is no reason to disbelieve the version of PW-3 and PW-4 who were the eye witness in this case.

6. We have considered the submissions canvassed by the learned Counsel for respective parties.

7. PW - 3 from his evidence does not appear to be a truthful witness. He has narrated the prosecution case as mentioned earlier. However, in the cross-examination, he has admitted that his statement was never recorded by the Police. He had not disclosed about the incident to anybody including the relatives of the deceased. This conduct appears to be quite unnatural. His

evidence is recorded in the year 2019. There is long silence over a long period on his part. This makes his evidence doubtful.

8. As far as PW-4 is concerned, he has deposed in his examination is chief that Saddam assaulted Hyder by a stick and Salman stabbed by knife on the abdomen. However in the cross examination he was confronted with the police statement in which he described the incident in the exactly opposite manner. He had stated before the police that Salman had assaulted Hyder by a stick and Saddam had stabbed with a knife. These two contrary versions make his evidence weak and, therefore, even this witness becomes doubtful. As far as Shaukatali is concerned, he was father of the deceased. He has deposed in his evidence about oral dying declaration. However, such dying declaration does not find place in the F.I.R. As rightly submitted by both the learned Counsel, the recovery of knife at the instance of accused Salman knife, and, stick and knife at the instance

of accused Saddam were from open space accessible to all. Therefore, that circumstance is not incriminating against either of the accused.

9. In this view of the matter, both these applicants have made out a case for their release on bail during pendency of their respective appeals. It is made clear that all these observations are made only for deciding these bail applications. All these aspects will have to be finally considered at the time of final hearing of these appeals. Hence, the following order-

ORDER

. During disposal of Criminal Appeal No.592 of 2021 and Criminal Appeal No.460 of 2021 the Applicants are directed to be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand) each, with one or two sureties each in the like amount.

10. The Criminal Applications are disposed of.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]
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