

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

**CRIMINAL APPLICATION NO.3723 OF 2022
IN APEAL/847/2022 WITH APEAL/847/2022**

**SHAIKH KHADIR SHAIKH BASHIR
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Naseem R. Shaikh, Advocate for the applicant
Mr. S. P. Deshmukh, APP for the respondent/State

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.
DATED : 30th NOVEMBER, 2022**

PER COURT :-

1. Heard learned counsel for the applicant and learned APP.
2. Perused the notes of evidence filed on record. It is the contention of the applicant that the co-accused against whom similar role has been assigned is already acquitted by the Trial Court and hence the conviction of this applicant would not sustain.
3. Learned APP opposed the said contention by pointing out that there is direct evidence against present applicant showing his involvement in the crime.

4. *Prima facie* consideration of material on record shows that the incident in question has occurred after quarrel. There is recovery of incriminating article i.e. weapon at the instance of the co-accused who is acquitted by the Trial Court, whereas no recovery is attributed to the appellant. Having regard to these circumstances there is reason to accept the contention that applicant may have good case on merit for acquittal or at least for scaling down the offence. Since the appeal is not likely to be taken up for the hearing in near future, application deserves to be allowed. Hence the order.

ORDER

- (i) Application is allowed.
- (ii) Substantive sentence is suspended till the disposal of the criminal appeal.
- (iii) Applicant be released on PR bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount. Bail in the Trial Court.
- (ii) The applicant shall not tamper with the prosecution evidence.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

ssp