

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

**INTERIM APPLICATION NO. 590 OF 2022
IN
CRIMINAL APPEAL NO. 171 OF 2022**

Maresh Dattatraya Wagh ..Applicant.
Versus
The State of Maharashtra ..Respondent

**WITH
CRIMINAL APPEAL NO. 206 OF 2021**

Swapnil Vijay Bhilare & Ors. ..Appellants
Versus
The State of Maharashtra ..Respondent

Mr. S. M. Gorwadkar, Sr. Advocate i/b. Mr. S. H. Gangal and Mr. G.
H. Gangal for Applicant & Appellant in Appeal No.171/2022.
Mr. A. A. Palkar, APP for State.

**CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.
DATE : 16th MARCH 2022.**

PC :

1. The Applicant has preferred this application for bail during pendency and final disposal of this Appeal. The Applicant was the original Accused No.3 who was convicted by the trial court for commission of offence of murder of one Eknath. There were 9 accused. All of them were convicted. Earlier, one more appellant

i.e. Accused No.8 had preferred an application for bail during pendency of his appeal. His application was rejected.

2. Heard Shri. Gorwadkar, learned Senior counsel for the Applicant and Shri. Palkar, learned APP for the State.

3. Shri. Gorwadkar submitted that, though there is evidence of PW-1 who appears to be an eye witness, if his evidence is perused carefully, it will made clear that, he is not a truthful witness. There is background of enmity between the two groups. The present applicant, as well as, other accused are implicated falsely. He submitted that, his evidence being not entirely reliable; corroboration was necessary. The prosecution has shown recovery of sickle at his instance, however, evidence also shows that same sickle was shown to be recovered at the instance of another accused as per the recovery panchanama. He, therefore, submitted that, in absence of corroboration to the evidence of PW-1, the applicant deserves to be released on bail.

4. Learned APP opposed this application. He submitted that, PW-1's evidence has no infirmity. The F.I.R. was lodged immediately. There is no scope for concocting a false story. The name of the applicant was mentioned in the F.I.R. itself.

5. We have considered these submissions. We have carefully perused the evidence of PW-1. He was brother of the deceased Eknath. He has stated that, he had seen the incident. It had taken place on 01/12/2014, at about 8.30a.m. He had seen

about 10 to 12 persons quarrelling with Eknath. The applicant was one of them. PW-1 has specifically deposed that the applicant was armed with a chopper. Other accused were armed with deadly sharp weapons. All of them started assaulting Eknath. He rushed towards the back side of temple. PW-1 also rushed towards Eknath. He raised shouts, but by that time, Eknath was brutally assaulted. It is his case that, PW-1 along with others had taken Eknath to hospital. He was declared dead before admission. Thereafter, on the advise of police officer from Kothrud police station, PW-1 lodged this F.I.R. to Paud police station. The F.I.R. is brought on record at Exhibit 72.

6. We find that, PW-1's evidence is incriminating against the present applicant. Specific role and specific weapon are attributed to him. The F.I.R. is lodged immediately and in that F.I.R. applicant's name was mentioned. The F.I.R. was lodged at Paud police station on the advise of police officers of Kothrud police station, therefore, there is no infirmity in the evidence of PW-1. So far as recovery part is concerned, it is a corroborative piece of evidence which will not outweigh the evidence of an eye witness in this case. The deceased had suffered in all 26 chop, stab and incised injuries by means of deadly weapons viz. Chopper, sword and sickle.

7. Considering this, no case for grant of bail during the pendency and final disposal of this appeal is made out. However,

considering that the applicant is in custody since 05/12/2014, this Appeal can be placed on final hearing board.

8. Therefore, place this Appeal on weekly final hearing board from the week commencing from 25/04/2022.

9. The Application is rejected and is disposed of.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)