

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.538 OF 2021
IN
CRIMINAL APPEAL NO.719 OF 2015

Munnalal Shankarlal @ Niranjan Sharma ... Applicant / Appellant
Vs.

State of Maharashtra ... Respondent

WITH
CRIMINAL APPEAL NO.220 OF 2013

Mr. S. M. Oak i/b. Mr. Sagar Joshi for Applicant / Appellant.
Ms. Veera Shinde, APP for Respondent-State.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : APRIL 07, 2022

P.C. :

. Heard Mr. Oak, learned counsel appearing for the applicant and
Ms.Shinde, learned APP appearing for the respondent-State.

2. By this application, applicant – original accused No.1 is seeking
suspension of the substantive sentence and his enlargement on bail pending
the hearing and final disposal of the appeal.

3. Mr. Oak, learned counsel appearing for the applicant invites our
attention to the order dated 28.10.2013 passed by this Court (*Coram: P. V.
Hardas & P. N. Deshmukh, JJ.*) in Criminal Application No.236 of 2013 in
Criminal Appeal No.220 of 2013 and submits that on the ground of parity,
the applicant is entitled to be released on bail. He further invites our
attention to the evidence of P.W.9 - Rohit, and in particular his cross-

examination, and submits that P.W.9, who is the sole eye-witness to the incident, did not know the applicant prior to the incident. P.W.9 did not identify the applicant before the trial Court.

4. Learned counsel appearing for the applicant, therefore, submits that pending the hearing and final disposal of the criminal appeal, substantive sentence of the applicant may be suspended and he may be enlarged on bail during the pendency of the appeal.

5. On the other hand, Ms. Shinde, learned APP invites our attention to the findings recorded by the learned trial Judge and the evidence of P.W.9 and submits that the appellant is not entitled to be released on bail.

6. We have appreciated the rival submissions. With the able assistance of the learned counsel appearing for the applicant and the learned APP appearing for the respondent-State, we have carefully perused the evidence of the prosecution witnesses, and in particular, P.W.9. P.W.9 in his cross-examination stated thus,

“True that I had seen both the accused first time in the court after the incident. True that today due to passage of time, I cannot state that the accused present before the court were the same assailants who were seen while assaulting on the terrace.”

7. The aforesaid admission of P.W.9 in his cross-examination will make it abundantly clear that P.W.9 failed to identify the appellant before the trial Court. There was no identification parade carried out by the Investigating Officer. Evidence of other prosecution witnesses is also not useful.

Admittedly, the co-accused has been released on bail by this Court by order dated 28.10.2013.

8. For the aforesaid reasons, we are of the view that a case for suspension of the substantive sentence and the enlargement of the applicant on bail is made out. Hence, the following order:-

- (i) The Application is allowed;
- (ii) Sentence of the applicant stands suspended till the hearing and final disposal of Criminal Appeal No.719 of 2015;
- (iii) During the pendency and final disposal of Criminal Appeal No.719 of 2015, applicant - Munnalal Shankarlal @ Niranjan Sharma is directed to be released on bail on executing a P. R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount;
- (iv) In addition, the applicant shall attend the Navghar Police Station once in three months i.e., on 1st Saturday of the quarter between 8:00 a.m. and 9:00 a.m. during the pendency of this Appeal;
- (v) Criminal Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)