

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

***INTERIM APPLICATION NO.2324 OF 2022
IN
CRIMINAL APPEAL NO.758 OF 2018***

Mahadev @ Hemant Masgonda Kalgutagi Applicant
Vs.
The State of Maharashtra Respondent

Dr. Yug Mohit Chaudhary for the Applicant.
Mr. A. R. Kapadnis, APP for Respondent-State.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 1st AUGUST 2022.

P. C.

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant vide Judgment and Order dated 23/4/2018, passed by learned Addl. Sessions Judge, Kolhapur in

Sessions Case No.96 of 2013, has been convicted for the offence punishable under section 302 read with 34 and 120-B of IPC and has been sentenced to suffer imprisonment for life.

4. It appears that the only evidence as against the applicant is the evidence of the sole witness PW-19-Somesh Suhas Sathe. The said witness has stated the manner in which the incident has taken place i.e. firing of bullet on Ashok Patil by accused No.1-Dilip Jadhav and Accused No.2-Amol Jadhav. The said witness has further stated that the applicant (Accused No.5) and another co-accused i.e. accused No.4 came on motor cycle and Activa at the spot, and that the accused Nos. 1 and 2 sat on the said motorcycle and escaped.

5. Learned counsel for the applicant submits that the evidence of PW-19-Somesh Sathe shows that the said witness has stated that one eye of the applicant (original accused No.5) was defective, Whereas, the arrest form which is at page No.88 of the paper book, shows that the person who had a defective eye, was accused No.3-Harish and not the present applicant (accused No.5). Learned counsel also relied on the arrest form of the applicant

particularly page No.96 of the paper book wherein, in the column of deformities, nothing is mentioned. Having regard to the same, it is submitted that the identification of the applicant cannot be relied upon and is rendered suspect.

6. He further submits that apart from the evidence of PW-19-Somesh Sathe, there is no other corroborative piece of evidence to connect the applicant with the offence. He further submits that the applicant has no antecedents and that the applicant is in custody, for the last 9 ½ years.

7. Learned APP opposed the application.

8. Perused the papers, in particular the evidence of PW-19-Somesh Sathe, who is the sole eye witness in the said case. As far as role of the applicant is concerned, PW-19 has stated that after the bullets were fired by accused No.1-Dilip Jadhav and accused No.2-Amol Jadhav, two persons were present, one on Activa and another on motor cycle, and that the said assailants who fired at Ashok Patil, sat on the said Motor Cycle/Activa and went from the

said spot. Accused No.3-Harish Patil is also stated to have sat on the motor cycle behind Amol Jadhav.

9. Perusal of the evidence of PW-19-Somesh Sathe shows that he has stated that one eye of the applicant was defective, whereas, the arrest form which is at page 96 of the paper book shows that the person who had deformity i.e. a defective eye was accused No.3-Harish. As far as the applicant is concerned, in his Arrest Form, the column with respect to deformity, the same is blank.

10. Apart from the aforesaid, there is no other corroborative piece of evidence, in terms of last seen, recovery or motive to connect the applicant with the offence. The Applicant is in custody for about 9½ years. We accept the statement of the learned Counsel for the applicant, that the applicant has no antecedents.

11. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the

following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

12. The Application is allowed in the aforesaid terms and is accordingly disposed of.

13. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.