

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3029 OF 2022**

IN

CRIMINAL APPEAL NO. 797 OF 2019

Nazir Sardar Khan ...Applicant/Appellant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 198 OF 2018

Rustam Sardar Khan ...Appellant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 787 OF 2019

Amir Sardar Khan @ Ammu ...Appellant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 797 OF 2019

Nazir Sardar Khan ...Appellant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 795 OF 2019

Salman @ Salman Mohara

Nadeem Shaikh

...Appellant

Versus

The State of Maharashtra

...Respondent

.....

Ms. Rebecca Gonsalves i/b Yug Chaudhary for the
Applicant/Appellant.

Mr. A.R. Kapadnis, APP for the State.

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CORAM : PRASANNA B. VARALE &
N.R. BORKAR, JJ.

DATED : 27 SEPTEMBER 2022

P.C. :-

The applicant Nazir Sardar Khan has filed appeal against the judgment and order dated 31.01.2018 passed by the Additional Sessions Judge, Dindoshi, Mumbai in Sessions Case No. 203 of 2013.

2. The applicant who was Accused No. 3 was charged and tried alongwith other co-accused for commission of offence punishable under Sections 148, 302 read with 149 of Indian Penal Code and Section 4 and 25 of the Arms Act. The trial Court by the impugned judgment and order convicted the applicant *inter alia* for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment.

3. As per the case of prosecution at about 4.00 a.m. in the night on 26 August 2013, the present applicant alongwith other co-accused assaulted the deceased Ismile Gani by knives and committed his murder.

4. We have heard the learned counsel appearing for the applicant and the learned APP for the State and with their assistance persued the record. The prosecution has examined PW-8 Reshma Abdulla Shaikh, PW-9 Nagmma Parmeshwar Jenti and PW-13 Ruksana Pirmohammed Rafique as eye-witnesses, however, they turned hostile.

5. The learned counsel for the applicant by inviting our attention to the order of this Court dated 8 July 2021 in Appeal No. 795 of 2019 submitted that this Court granted bail to co-accused by observing that there is a serious doubt about the identity; the applicant is in jail since 24 September 2013 i.e. for more than seven years and the appeal is not likely to come up for hearing immediately. The learned counsel Ms. Gonsalves for the applicant submits that the case of the present applicant stands on a better footing than the co-accused who has been released on bail.

6. The learned counsel for the applicant then by inviting our

attention to the testimony of panch witness to the recovery of weapon knife vehemently submitted that even this witness has failed to support the case of prosecution. It is submitted even otherwise the so called recovery of the weapon is doubtful as the alleged recovery came to be made from an open place, that too after about a week.

7. It is further submitted by learned counsel for the applicant that the applicant is behind bars for more than nine years and the appeal is not likely to be taken up for hearing. It is thus submitted that applicant be enlarged on bail.

8. On the other hand, the learned APP submitted that though the eye-witnesses have not supported the prosecution, there is enough evidence in the form of the oral dying declaration and extra judicial confession to connect the present applicant and other co-accused with the alleged crime. It is submitted that the deceased was brutally murdered and thus, application may be rejected.

9. Admittedly, the applicant is in jail for more than Nine years. The eye-witnesses have not supported the prosecution case. This Court has released the co-accused on bail against whom the allegations are somewhat identical. Considering these facts, we are inclined to release the applicant on bail during the pendency of the appeal.

10. Accordingly, the applicant shall be released on bail on execution of P.R. bond in the sum of Rs. 25,000/- with one or two surities in the like amount to the satisfaction of trial Court. The applicant will remain present before this Court as and when directed.

11. Interim Application is disposed of.

(N.R. BORKAR, J.)

(PRASANNA B. VARALE, J.)