

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO.3127 O 2021
IN
CRIMINAL APPEAL NO.1061 OF 2021

Subhash Ramesh Kengar : Applicant/Appellant.
Versus
State of Maharashtra : Respondent.

WITH
CRIMINAL APPEAL NO.575 OF 2021

Prakash Tukaram Bhosale and anr. : Appellants.
Versus
The State of Maharashtra : Respondent.

Ms. Shaheen Kapadia i/by Ms. Vrushali L Meaindad for the
Applicant/Appellant in Criminal Appeal No.1061 of 2021.
Mr. Y M Nakhwa, APP for the Respondent/State.

CORAM : S. S. SHINDE,
SARANG V. KOTWAL, JJ
DATE : 17th March 2022

P.C.

1 The Interim Application No.3127 of 20221 is filed by the
Applicant, who is the Appellant in Criminal Appeal No.1061 of 2021, for
releasing him on bail. The Applicant/Appellant – Subhash Ramesh Kengar is
the original Accused No.2 in Sessions Case No.823 of 2016.

2 Heard the learned counsel for the Applicant and the learned APP
for the Respondent/State.

3 The learned counsel appearing for the Applicant invites attention of this Court to the evidence of PW-1 Rama Vilas Atole and PW-2 Vicky Vilas Atole and submits that it is difficult to believe that the family members could come outside and watch that the deceased left with the Accused. It is submitted that PW-3 Ishwar Vithoba Tikone in his evidence stated that on 26/05/2016 at about 11.00 pm he went to his house and took the dinner. When he returned back from his duty at 12.00 night, he saw both the accused and Suraj (deceased) at the Amrai, who were consuming liquor. PW-3 further stated in his deposition that both the accused assaulting Suraj by beer bottle. The learned counsel appearing for the Applicant submitted that in all probabilities, PW-3 could not have witnessed the incident since he was standing about 100 to 150 feet away from the spot of incident and, there was no light at the spot of incident. It is also submitted that the Chemical Analyser's report does not help the prosecution case and there were no finger prints on the beer bottle. It is submitted that the Applicant has no criminal antecedents. The Appeal filed by Applicant/Appellant may take some time for hearing. Therefore, the learned counsel for the Applicant prays that the sentence may be suspended and the Applicant may be enlarged on bail during pendency of the Appeal.

4 On the other hand, the learned APP invites attention of this Court to the findings recorded by the Trial Court as also to the evidence of the

prosecution witnesses and submitted that the Trial Court has properly appreciated the evidence on record and has come to a right conclusion by recording correct findings. It is therefore submitted that the Interim Application for bail may not be entertained by this Court.

5 We have given careful consideration to the rival submissions. We have also carefully perused the evidence of the prosecution witnesses in particular PW-1, PW-2 and PW-3, so also other evidence brought on record by the prosecution. In our prima facie opinion, the Trial Court has correctly appreciated the evidence of PW-3 who was the eye witness. Apart from it, the incriminating articles from the spot are recovered including the broken glass bottle. The Medical Officer has found as many as 26 injuries on the person of the deceased. The evidence of prosecution witnesses, and in particular evidence of PW-3 gets corroboration from the medical evidence. Prima facie in our opinion, the findings recorded by the Trial Court are sustainable as there is sufficient evidence brought on record by the prosecution.

6 In that view of the matter, we do not wish to elaborate the reasons in this order as the Appeal filed by the Applicant/Appellant is pending for hearing and final disposal on merits. No case for bail pending appeal is made out. For the reasons afore-stated, we are not inclined to enlarge the Applicant/Appellant on bail. Hence the Interim Application No.3127 of 2021 stands

rejected. However, keeping in view the sentence undergone by the Applicant/Appellant, the hearing of the Criminal Appeal No.1061 of 2021 is expedited. The Registry is directed to include this Criminal Appeal No.1061 of 2021 with Criminal Appeal No.575 of 2021 for final hearing on the weekly final hearing board commencing from 11/04/2022.

[SARANG V. KOTWAL, J]

[S. S. SHINDE , J]