

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

**INTERIM APPLICATION NO.3264 OF 2021
IN
CRIMINAL APPEAL NO.1025 OF 2021**

Mohsin Mobin Shaikh

.... Applicant/Appellant/
Orig. Accused No.4

versus

The State of Maharashtra

... Respondent

.....

- Mr. Himanshu V. Kode a/w Ms. Janhavi S. Karnik i/b.
Mr. Sherali S. Khan, Advocate for Applicant/Appellant.
- Mr. S. S. Hulke, APP for State/Respondent.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.
DATE : 21st MARCH, 2022.**

P.C. :

1. This is an application for bail pending the Appeal. The Applicant was the original accused No.4 in Sessions Case No.815 of 2014 on the file of Additional Sessions Judge, City Civil & Sessions Court at Greater Bombay. By the impugned Judgment and Order dated 12/10/2021, the Applicant along with other accused was convicted for the offence punishable u/s 302 r/w 34 and section 120-B r/w 34 of the Indian Penal Code. He was

sentenced to suffer life imprisonment and to pay a fine of Rs.2,000/-. In default to suffer rigorous imprisonment for one year. For offence punishable under section 120-B r/w 34 of IPC, he and others were sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.500/- and in default to suffer rigorous imprisonment for one year. The Applicant was acquitted for commission of offence punishable under section 4 r/w 25 of the Indian Arms Act. The Applicant was given set off for the period he was in jail during the trial. The Applicant is in custody since 07/08/2020.

2. Heard learned counsel Mr. Himanshu V. Kode, for the Applicant and Mr. S. S. Hulke, learned APP for the State.
3. The prosecution case is reflected in the evidence of informant PW.1 Mohd. Ibrahim Abu Bakar Shaikh. He has stated that, on 31/07/2014, at about 07.15 p.m., his elder brother was assaulted by one Kaliya and his friend. P.W.1 has deposed that accused Mangesh Band and the Applicant had caught hold of the deceased and Kaliya and Sonu had assaulted him with knife.

After the assault, the accused ran away from the spot. He lodged his FIR. The deceased died because of the murderous assault on him.

4. Learned counsel for the Applicant submitted that there are no independent witnesses to the incident. All the witnesses are interested. There are major omissions in their statements. Therefore they are not reliable. The Applicant is in custody since 07/08/2014. The Applicant is not ascribed a particular role of using a weapon on the deceased. In fact, he is acquitted for the offence under Indian Arms Act. Considering the weak nature of evidence against the Applicant, he deserves to be released on bail.

5. Learned APP submitted that P.W.13 is an independent witness and there are no infirmities in his statement. There are three eyewitnesses to the incident. P.W.1 Mohd. Ibrahim Shaikh - the first informant, P.W.13 Sanjay Subramaniam Shetty and P.W.18 Namdeo Shankar Kirdat.

6. We have considered these submissions. We have also perused the evidence. As far as P.W.1 is concerned, omissions from his FIR as well as from his supplementary statement, are brought out in the cross-examination on behalf of present Applicant. He has admitted that the Applicant's name is not mentioned in the FIR and even his role was not mentioned. He could not explain this omission from his statement in the FIR.

7. As far as P.W.18 is concerned he has also admitted in his cross-examination that there was omission from his police statement regarding the Applicant and Mangesh having held the deceased when Kaliya and Sonu were assaulting him. He has also admitted that since he was scared, he could not recollect name of the Applicant and therefore his name was not mentioned before the police. He has not named the Applicant in his statement, though he was knowing him. There is no explanation regarding this.

8. As far as P.W.13 is concerned, though there are no discrepancies in the form of omission in his deposition and

police statement, his statement itself was recorded belatedly on 02/08/2014. No further explanation is offered as to why it was not recorded immediately though he was available. He was a friend of the deceased. He had taken the deceased to Rajawadi hospital. Thus he was very much available and yet his statement was not recorded immediately.

9. Thus, it appears that there are arguable issues and the evidence against the Applicant appears to be weak. However, these issues will have to be decided at the final hearing stage. At this stage, the Applicant has made out the case for his release on bail during the pendency of the present Appeal. The Applicant is in custody since 07/08/2014. At the highest, the role assigned to him is that of holding the deceased when the other accused had assaulted him. Whether he had shared a common intention to commit murder, is another issue which will have to be decided at final hearing. Considering this, the Applicant deserves to be released on bail, during pendency of Appeal and its final hearing.

10. Hence, the following order :

ORDER

- (i) During the pendency and final hearing of Criminal Appeal No.1025 of 2021, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)