

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 39 OF 2023
IN
CRIMINAL APPEAL NO. 356 OF 2022

Shaikh Shakil @ Babulal Shaikh Ahemad
Age : 55 years, Occ : Business,
R/o Garib Nawaz Colony, Shahada,
Tq. Shahada, Dist. Nandurbar

... Applicant
(Orig. Accused No.2)

Versus

The State of Maharashtra
Through Police Station Officer,
Shahada Police Station, Shahada,
Tq. Shahada, Dist. Nandurbar

... Respondent

...
Mr.A.B. Girase – Advocate for Applicant
Mrs. V.S. Choudhari – APP for Respondent/State.

....
CORAM : SMT. VIBHA KANKANWADI &
GAURI GODSE, JJ.
DATE : 27th January, 2023

PC:

1. This application is filed by original accused no.2 praying for suspension of sentence and for enlarging him on bail. By judgment and order dated 1st April, 2022 passed by learned Additional Sessions Judge, Shahada, the present applicant is convicted for the offence punishable under sections 302 and 307

read with 34, 37 and 120-B of the Indian Penal Code. The applicant along with other two co-accused have filed Criminal Appeal No.356 of 2022 in this Court, which is admitted and pending for final hearing.

2. It is submitted on behalf of the applicant that the prosecution failed to prove the guilt of the applicant beyond reasonable doubt and there are variations, discrepancies and contradictions in the depositions of the witnesses. It is further submitted that the CCTV footage produced on record creates serious doubt about the truthfulness of the version of material eye witnesses. It was submitted that the allegation against the applicant is that he attacked the victims outside the hospital building and the victims to save themselves ran inside the building. It was further submitted that the CCTV footage would show that the victims when were seen entering the hospital buildings did not have any blood stains and shirt of the victims was also not seen to be torn. Thus, the same creates doubt about the prosecution case.
3. Learned counsel for the applicant submits that the impugned judgment and order is of 1st April, 2022 and the applicant has already undergone sentence from the date of conviction. Hence,

it was submitted that the sentence against the applicant be suspended and the applicant be released on bail.

4. Learned A.P.P. opposed the application and contended that the eye witnesses that were examined by the prosecution are consistent with their stand as regards the role of the present applicant. Learned A.P.P. further submitted that the version of the eye witnesses clearly shows that the applicant is involved in the offence for which he is convicted. Offence was committed during the broad day light in the hospital premises and the applicant was seen with weapon. Thus, there is absolutely no doubt in the version of the eye witnesses examined by the prosecution. Hence, the learned A.P.P. submitted that the application be rejected.
5. For considering the arguments that are made on behalf of the applicant, it will be necessary to re-appreciate the evidence at this stage. Re-appreciating the evidence at this stage is not permissible. Suffice it to say that prima facie, evidence of eye witnesses examined by the prosecution as PW-1, PW-3 and PW-4 is consistent with the case of the prosecution about the role played by the applicant in the offence that was committed. It cannot be ignored that the incident occurred during the broad

day light in hospital premises and as per the version of the eye witnesses, the applicant was seen with a weapon in the hospital. Eye witness has also deposed that the applicant was seen assaulting the deceased.

6. Moreover, the applicant, who is undergoing life sentence has undergone imprisonment for a period of less than a year. Considering the prosecution evidence and the period of incarceration so far undergone, no case is made out to grant bail at this stage.
7. However, if the appeal is not heard within a reasonable time, it will be always open to the applicant to renew the prayer for suspension of sentence and grant of bail at appropriate stage. Needless to record that, the observations in this order are only for the limited purpose of dealing with the prayer of suspension of sentence at this stage.
8. Hence, for the reasons stated above, the application is rejected.

[GAURI GODSE, J.]

[SMT.VIBHA KANKANWADI]