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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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INTERIM APPLICATION NO.829 OF 2023
IN
CRIMINAL APPEAL NO.938 OF 2022

Siddharam M. Dindore ...Applicant
V/s.
State of Maharashtra & Anr. ...Respondents

Mr.Aniket Nikam i/b Mr.Amit Ichhan for the Applicant.

Ms.M.M. Deshmukh, APP for Respondent No.1 – State.

Mr.Priyal Sarda for Respondent No.2.

CORAM : NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.
DATE : 23RD AUGUST, 2023.

P.C. :-

1. This is an application under sub-section 1 of Section 389 of Cr.P.C. by Accused No.2, who was convicted by the learned Sessions Judge for an offence punishable under Section 302 vide judgment and order dated 22nd August, 2022 delivered in Sessions Case No.218 of 2017.

2. The genesis of the offence alleged against the Applicant is, the Applicant and the deceased Mallikarjun and the other co-accused were cousins. There was *inter-se* dispute in relation to the partition of

immovable property. The Applicant along with co-accuse provoked Bhagirathi, real sister of the deceased Mallikarjun, to demand share in the family property which has started a fight between the parties hereto. On 19th March, 2017, the deceased Mallikarjun was fired at by Accused No.1 through his firearm resulting into his death. The role attributed to the present Applicant i.e. Accused No.2 is that of having physical presence on the spot of the incident. PW 2 in his testimony has stated that the Applicant was armed with a pistol, whereas PW 5 has stated that the Applicant was armed with knife. A recovery of firearm from the house of the Applicant was effected. However, it has to be noted that no specific overt act is attributed to the Applicant in commission of the offence in question but for above sole.

3. In this backdrop, submissions of Mr.Nikam, learned counsel appearing for the Applicant are, the Applicant was arrested on 13th October, 2017 and has surrendered on 22nd August, 2022. Similarly placed Accused No.2 - Basavraj Mahadeo Dindore was ordered to be released by this Court on 18th January, 2023. As such he would urge that the Applicant on parity also deserves the same order. Apart from the above on merit also Mr.Nikam has claimed that the Applicant deserves to be released, as he was on bail during trial.

4. While countering the aforesaid submissions, learned APP, Ms.Deshmukh assisted by Mr.Sarda, counsel appearing for

Respondent No.2 - Complainant would urge that the case of the Applicant cannot be considered at par with co-accused as Court must appreciate following facts : (a) the Applicant was absconding after the offence was registered and (b) while on bail, has committed an offence punishable under the Prevention of Money Laundering Act, 2002. We have appreciated the said submissions.

5. As far as the registration of offence under the Prevention of Money Laundering Act, 2002 is concerned, the same cannot be termed as bodily offence and as such it cannot be considered as a detriment to the interest of the Petitioner for granting relief under sub Section (1) of Section 389 of Cr.P.C.

6. As far as the case on parity is concerned, the Applicant subsequent to his arrest has faced the trial and after conviction was taken in custody. It is not the case of the Prosecution that the Applicant any time in past has jumped the bail condition during pendency of trial.

7. Apart from above, this Court has already recorded the reasons for release of Accused No.2, who is similarly placed which can also be germane to the cause for considering the prayer of the present Applicant.

8. That being so, we deem it appropriate to allow the present application. The Applicant be released on bail on furnishing P.R.

bond of Rs.25,000/- with one or two sureties in the like amount.

(RAJESH S. PATIL, J.)

(NITIN W. SAMBRE, J.)